

1 STATE OF NEW YORK : NASSAU COUNTY

2 COUNTY COURT PART XIV

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK

Ind. 1456N-00

5 - against -

Trial

6 PAUL SCRIMO,

7 Defendant.

8 -----X

9 May 9th, 2002

262 Old Country Road

10 Mineola, New York

11
12 B E F O R E :

13 HON. JEFFREY S. BROWN,

County Court Judge

14
15
16 A P P E A R A N C E S:

17 HON. DENIS DILLON

Nassau County District Attorney

18 BY: ROBERT BIANCAVILLA, Esq., of Counsel,

Assistant District Attorney

19 For the People

20
21 JOHN CHAMBERLAIN

1001 Franklin Avenue

22 Garden City, NY

For the Defendant

23
24 KATHLEEN PLAIA

OFFICIAL COURT REPORTER

25
Kathleen Plaia

1 (Whereupon, the following takes place in open
2 court, in the presence of the Court, Assistant District
3 Attorney Biancavilla, Mr. Chamberlain and the
4 defendant, outside the presence of the sworn jury.)

5 THE CLERK: Part XIV of the County Court,
6 County of Nassau, is now in session. Honorable
7 Jeffrey S. Brown presiding. You may be seated.

8 This is case on trial continued. All parties
9 are present. Jurors are not present at this time.

10 Are the People ready to proceed?

11 MR. BIANCAVILLA: People are ready, Judge.

12 THE CLERK: Defense ready to proceed?

13 MR. CHAMBERLAIN: The defense would like an
14 application, Judge.

15 THE COURT: I want to put something on the
16 record first, Mr. Chamberlain, before you make any
17 applications.

18 MR. CHAMBERLAIN: Okay. Fine, Judge.

19 THE COURT: I'm very distressed with
20 something I heard from my law secretary this morning.
21 That at approximately 7:30 last night, you went over to
22 her house, ex-parte, to talk to her.

23 Excuse me. That is simply not permitted.
24 There is absolutely no reason you should have to go to
25 my law secretary's home and speak to her. If there's

1 anything you have to speak to her about with respect to
2 this trial, you wait until 9:30 in the morning.

3 I will ask my law secretary to put some
4 information on the record with respect to what
5 happened.

6 MS. ROBBINS: As your Honor stated,
7 Mr. Chamberlain came to my house at 7:30 with
8 information that he had about one of the witnesses on
9 his list who had been -- I'm sure he will go on the
10 record with it -- had been taken into custody allegedly
11 in Brooklyn, and was being transported back to Nassau
12 County on some warrant that may or may not exist. And
13 without going into the situation, I listened to what he
14 had to say, I didn't take any action. And I don't know
15 whether the Court wants to inquire as to the
16 underpinnings of the conversation. But --

17 THE COURT: I'm sure Mr. Chamberlain had a
18 good reason for -- perhaps he can enlighten me why he
19 had to come over to my law secretary's house at 7:30
20 last night, why such application, or whatever you had
21 to say, couldn't be made today at 9:30.

22 MR. CHAMBERLAIN: Judge, the purpose of my
23 going to her house was to get a call to you.

24 And the purpose of that was, the witness who
25 was picked up in the city, called me yesterday after

1 leaving court, somewhere around four p.m.. This is a
2 witness, one of the witnesses, who testified before
3 Judge Honoroff previously, to the effect that she had
4 purchased cocaine from John Kane, the People's chief
5 witness. This witness also told me that she knew that
6 the victim used cocaine and got it from John Kane.

7 This was one of the witnesses that I
8 originally did not want to put on the witness list, but
9 did after colloquy with the Court about the Court
10 advising the jury about witnesses.

11 This witness told me that she was picked up
12 standing outside a store, not doing anything, charged
13 with loitering. That was finished, and there was a
14 warrant lodged from Nassau as of last year, I believe
15 it was July.

16 I immediately checked with Legal Aid who I
17 thought had represented her, and they did a computer
18 run and indicated there were no outstanding warrants
19 for that person.

20 I called the court and was advised there were
21 no outstanding warrants for that person.

22 I was also told, on a failure to appear, on a
23 minor charge -- which is what the warrant was
24 supposedly about -- often times they would not even
25 bother to pick the person up. If they did want to pick

1 them up, they would transfer them to Riker's, and not
2 go in late at night.

3 I then found out there was a detective going
4 in late at night to bring her over to Headquarters. I
5 did not -- from the information I had, I did not
6 believe that this was an appropriate procedure, a
7 normal procedure.

8 For that reason I wanted -- based upon my
9 information, there was no warrant outstanding, which is
10 the information I got from the court, I wanted to call
11 you.

12 THE COURT: There's still no reason why this
13 couldn't have waited until 9:30 this morning.

14 MR. CHAMBERLAIN: Yes, Judge. I think it
15 would have been inappropriate for her to be brought
16 over for questioning by the district attorney, if, in
17 fact, that was the purpose.

18 THE COURT: Are you finished?

19 Mr. Biancavilla, do you wish to respond in
20 any way?

21 MR. BIANCAVILLA: Judge, I have no knowledge
22 of anything he is talking about.

23 I think the appropriate sanctions should be
24 imposed. And I think the matter should be referred to
25 the Disciplinary Committee.

1 This is not the first time, this is the
2 second time he's attempted something like this, Judge,
3 two days in a row.

4 MR. CHAMBERLAIN: I object to that, Judge.
5 "Something like this" is completely inappropriate.

6 The prior instance involved a phone call with
7 an attorney that I believe probably had set that up and
8 said, I have nothing to gain here. I think probably he
9 was taping the phone call and trying to put words in my
10 mouth. And, obviously, the district attorney knew of
11 that phone call before I did.

12 MR. BIANCAVILLA: Judge, I was called after
13 Mr. Chamberlain made that phone call to Mr. Ketover.
14 Mr. Ketover advised me what had transpired. I never --
15 I had no knowledge of that phone call until after it
16 occurred.

17 THE COURT: Mr. Chamberlain, I'm just going
18 to say this very succinctly. I do not want any
19 ex-parte communications whatsoever with my law
20 secretary or with myself; any attempt to speak. When
21 you speak to my law secretary, you're attempting to
22 speak to me; I do not want that.

23 Do we understand each other?

24 MR. CHAMBERLAIN: I understand that, Judge.

25 MR. BIANCAVILLA: Judge, I'm requesting on

1 the record a copy of today's transcript and also a copy
2 of yesterday's transcript so we can make the
3 appropriate --

4 THE COURT: Any other applications?

5 MR. BIANCAVILLA: Yes, Judge. This morning I
6 turned over to Mr. Chamberlain two additional pieces of
7 Rosario material that I came upon.

8 One involved Detective Kevin McCarthy, who
9 has not testified as of yet. That we have marked as
10 Rosario Exhibit number 73.

11 And Rosario Exhibit number 74 would be
12 four -- five pages of written notes of Detective
13 Downes. These are just notes of the measurements he
14 took at the crime scene, Judge. I became aware of them
15 this morning. I immediately turned them over.

16 THE COURT: All right. We'll append them to
17 the court exhibit, previously marked as a court
18 exhibit.

19 Mr. Chamberlain, did you have an application
20 you need to make?

21 MR. CHAMBERLAIN: Judge, I would like an
22 opportunity -- these exhibits are coming in the middle
23 of the trial, I think while we're on the examination of
24 this witness. I would like an opportunity to review
25 them.

1 THE COURT: I'll give you an opportunity
2 right before your cross-examination.

3 MR. CHAMBERLAIN: I also, Judge, would like
4 an opportunity to have a recess until two o'clock to
5 check on the witness we just spoke about, who I
6 understand is being brought in this morning.

7 THE COURT: There's no need to do that,
8 Mr. Chamberlain. You have time over lunch to do that.

9 Bring the jury in.

10 MR. BIANCAVILLA: Judge, I thought you were
11 going to let me mark these exhibits.

12 THE COURT: You want to premark exhibits?

13 MR. BIANCAVILLA: Yes, please.

14 THE COURT: Go right ahead.

15 MR. BIANCAVILLA: Thank you, Judge.

16 (Whereupon, the referred to exhibits are
17 premarked People's 32 through 44 for identification,
18 outside the presence of the sworn jury and alternates)

19 THE COURT OFFICER: Whereupon premarked
20 exhibits 32 through 44 for identification.

21 THE COURT OFFICER: Jury entering.

22 (Whereupon, the sworn jury and alternates
23 enter the courtroom)

24 THE CLERK: Both sides stipulate that all
25 sworn jurors are present and seated properly?

1 MR. BIANCAVILLA: Yes, your Honor.

2 MR. CHAMBERLAIN: Defendant ready.

3 THE COURT: Do you stipulate,
4 Mr. Chamberlain, that the jurors are seated properly?

5 MR. CHAMBERLAIN: Yes, I do, Judge.

6 THE COURT: Good morning, ladies and
7 gentlemen. I'm sorry for the delay. We had some other
8 court business that had to be taken care of, but we're
9 ready to proceed at this point.

10 Have the detective come back in, please.

11 D E N N I S D O W N E S, Detective, recalled as a
12 witness, having been previously duly sworn, resumed
13 the stand to continue testimony as follows:

14 THE CLERK: Detective Downes, you're reminded
15 you're still under oath. You may have a seat.

16 MR. BIANCAVILLA: Judge, can we display
17 People's 3 for the jury?

18 THE COURT: Yes, of course.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. BIANCAVILLA:

21 Q Detective, I'm going to ask that you be shown
22 what has been marked as People's 32 for identification. Do
23 you recognize that photograph?

24 A Yes, I do.

25 Q What do you recognize that photograph to be?

1 A This is a photograph of the living room of the
2 apartment at 196 Main Street. The pictures shows a couch, a
3 wall unit with a stereo and CD player.

4 Q Does that fairly and accurately depict how that
5 area looked when you photographed it and when you were at
6 the crime scene on April 13th of 2000?

7 A Yes, it does.

8 MR. BIANCAVILLA: We would offer that, Judge.

9 THE COURT: Show it to Mr. Chamberlain,
10 please.

11 MR. CHAMBERLAIN: No objection.

12 THE COURT: Mark it in evidence.

13 (Whereupon, the referred to item previously
14 marked for identification is received and marked
15 People's Exhibit 32 in evidence by the reporter as
16 instructed)

17 THE COURT OFFICER: People's 32 received in
18 evidence.

19 MR. BIANCAVILLA: Judge, can I display that?

20 THE COURT: Yes.

21 (Whereupon, People's Exhibit 32 in evidence
22 is displayed to the sworn jury and alternates.)

23 Q Now, Detective --

24 MR. BIANCAVILLA: Could I have him step off
25 the witness stand?

1 THE COURT: Yes, Detective. Step into the
2 well.

3 Q Detective, would you place this photograph please
4 with this pin just above the room that you are referring to.

5 Now, giving that that is People's 32, would you
6 take that blue sticker that says 32 on it and put it below
7 that photograph?

8 Now, Detectives, People's 29 is a photograph I
9 believe where you said where the telephone answering machine
10 was.

11 A Yes.

12 Q Were both those areas in the same photograph --
13 in the same room?

14 A Yes. This was also in the living room just on
15 the north side of the living room. And this wall unit is on
16 the south side.

17 Q Okay, thank you. Detective, I'm going to refer
18 you to People's 8 located on Exhibit number 31. Could you
19 tell the jury how far away from the rear entrance door you
20 were when you took that photograph?

21 A Yes. I would have to refer to my notes.

22 MR. BIANCAVILLA: May he refers to his notes?

23 THE COURT: Yes. You may refresh your
24 recollection.

25 A This photograph here we're talking about?

1 Q Yes. People's Exhibit number 8.

2 A It's twenty-five feet.

3 Q Now, would you please refer to photograph,
4 People's Exhibit number 11, which would be your photograph
5 F-1.

6 Could you tell the jury how far you were standing
7 when you photographed that photograph?

8 A This is the front of Captain Andy's and that was
9 fifty feet that I took that photograph.

10 MR. BIANCAVILLA: Thank you very much.

11 Please be seated.

12 (Whereupon, the witness resumes his seat on
13 the witness stand.)

14 Q Detective, can you see the monitor from over
15 there?

16 A No.

17 MR. BIANCAVILLA: Then, Judge, we have to
18 keep him out of the seat.

19 THE COURT: Detective, stand in the well.

20 THE WITNESS: Okay.

21 (Whereupon, the witness leaves the witness
22 stand.)

23 Q Detective, I'm going to display for you what is
24 in evidence as People's Exhibit 19. Could you just describe
25 for the jury what they're viewing in People's Exhibit 19?

1 A This is a photograph that I took of the -- I'm in
2 the kitchen at 196 Main Street, the apartment. These are
3 items that are on the kitchen table and it depicts a bottle
4 of Budweiser, glass that had some, what appeared to be, wine
5 in it, an ashtray, a photo album, piece of paper with words
6 from a song, there was a candle, keys, and a little tray
7 with some ceramic items.

8 Q Now, Detective, did you remove those items from
9 that table and take them as evidence?

10 A Yes, I did.

11 Q When you removed those items and took them as
12 evidence what, if anything, else did you see on that table?

13 A When I moved the dark ashtray I observed a brown
14 and white cigarette, but that was underneath the ashtray.

15 Q Was it one cigarettes butt or two?

16 A There were two.

17 Q One was brown and one was white?

18 A That's correct.

19 Q I will display People's Exhibit 20 to the jury,
20 and ask you to describe what you're viewing there.

21 A When I lifted up the ashtray which had no
22 cigarette butts in it at the time, I then observed two
23 cigarette butts, a brown one and a white Vantage 100
24 cigarette butt.

25 Q Now, the victim depicted in People's Exhibit 21,

1 which is displayed on People's Exhibit 31, that was the
2 position where she was observed when you found her?

3 A Yes, it was.

4 Q Okay. Now by her right leg there appears to be
5 some type of a little ball in that photograph, could you
6 point that out to the jury please.

7 (Whereupon, the witness complies)

8 Q What was that, Detective?

9 A That was a ball that a cat would play with.

10 Q Now, I'm going to display for the jury People's
11 Exhibit 22, and just explain to the jury what they're
12 viewing there.

13 A This is a photograph that I took from only
14 several feet away of Ruth Williams, lying next to her bed,
15 overalls, white sweater. Her arm was twisted and the
16 photograph shows the discoloration of her hand and face.

17 Q Now, did there come a time, Detective, when the
18 body of Ruth Williams was removed by the Medical Examiner's
19 Office?

20 A Yes, there was.

21 Q Okay. Did you make certain observations of the
22 area where Ruth Williams had been lying?

23 A Yes, I did.

24 Q I'm going to display for the jury People's
25 Exhibit 26. Could you explain to the jury what they're

1 viewing there.

2 A After Ruth Williams was removed by the Medical
3 Examiner and transported over to Nassau County Medical
4 Center, I then took a photograph -- I made some notations on
5 the carpet as to where Ruth Williams' feet and legs were and
6 head. And then took a photograph of the carpet where Ruth
7 Williams was laying. And here you see the ball that appears
8 in the other picture where her leg was. And then also
9 underneath her body, near her leg, was another white
10 cigarette Vantage 100 butt. And then up top there was also
11 blood on the carpet and a burn mark that I took a photograph
12 of.

13 Q I'm going to show you what has been marked as
14 People's 27 in evidence. Please tell the jury what they're
15 viewing now?

16 A And That was a burn mark in the carpet where the
17 white cigarette Vantage 100 was underneath her leg.

18 Q Displaying for the jury People's Exhibit 28.
19 Please explain to the jury what that is.

20 A That's a photograph on the far end of Ruth
21 Williams' bedroom on the floor. This is a photograph of
22 only several feet away. It shows the telephone/answering
23 machine, the telephone receiver and some of the wires that
24 were torn out of the telephone jack that was just on the
25 other side of the wall.

1 Q Displaying People's Exhibit 30.

2 A This is a photograph of that same
3 telephone/answering machine device. It just shows the front
4 key board and the tape that was inside the
5 telephone/answering machine and the wire that was torn out.

6 Q Displaying People's Exhibit number 23.

7 A This is a photograph I took several feet away
8 from Ruth Williams. Specifically, the photograph shows the
9 blank telephone cord tied tightly around her neck and on the
10 outside of her hair. It also shows the discoloration of her
11 face and there was some blood on the carpet.

12 Q Displaying People's Exhibit 25.

13 A This is another close-up photograph of the black
14 telephone cord tied around her neck on the outside of her
15 hair and tightly against the skin.

16 Q Displaying People's Exhibit 24. Please describe
17 that.

18 A This is a close-up photograph of the face of Ruth
19 Williams. The cord -- telephone cord is around her neck,
20 black cord, tightly around the front of her neck. And
21 there's a lot of blood coming from the nose, mouth. There's
22 some bruising around her eye and a lot of discoloration in
23 the face.

24 Q You can be seated now, Detective. Thank you.

25 (Whereupon, the witness resumes his seat on

1 the witness stand.)

2 Q Detective, when you removed the items from the
3 kitchen table, other than, in addition to finding those two
4 cigarette butts under the ashtray, when you removed the
5 photo album from the ashtray did you make any observations
6 about what was underneath the photo album?

7 A Yes. After I photographed and collected the
8 photo album on the kitchen table, I observed a button
9 underneath the photo album that I photographed and
10 collected.

11 Q All right. Now, with respect to the telephone
12 that was found at the scene, did you collect that telephone
13 as evidence?

14 A Yes.

15 Q And could you describe for the jury how you
16 collected that telephone?

17 A I had pair of latex rubber gloves on. And after
18 the telephone was photographed, I then collected, carefully
19 collected, the entire receiver and the answering machine,
20 placed it in a brown paper bag, labeled it with a marker. I
21 later put my evidence tag on that brown paper bag, sealed it
22 with evidence tape and transported it over to police
23 headquarters for evaluation by the Latent Fingerprint
24 Section.

25 Q I'm going to ask that you be shown People's

1 Exhibit 33 for identification. Do you recognize that?

2 A Yes, I do.

3 Q What do you recognize that to be?

4 A This is the telephone base and the receiver with
5 the damaged cord that I collected from Ruth Williams'
6 bedroom that night.

7 Q How do you recognize it to be that one?

8 A The in -- inside this plastic bag there's the
9 brown paper bag that I put the telephone inside of that
10 night. And it contains my writing and also my crime scene
11 evidence label with the date and the homicide number
12 attached to this case.

13 MR. BIANCAVILLA: Thank you.

14 Q Now, did there come a time during the course of
15 your examination of that apartment when you looked at the
16 entertainment center that you have discussed in People's
17 Exhibit number 32?

18 A Yes, I did.

19 Q What observations did you make regarding that
20 entertainment center?

21 A I noticed that the power to the Cd player was on.
22 That there was no CD inside the CD player. And I observed
23 right next to the CD player, on a shelf, a plastic CD,
24 Allman Brothers. I also observed a cassette that was also
25 on the lower shelf.

1 Q And what, if anything, did do you with the CD
2 case, did you examine it?

3 A Yes, I examined it. I applied -- I lightly
4 applies some fingerprint powder to that CD, plastic CD
5 holder case. I observed some latent fingerprints. Then I
6 packaged the item in brown paper bag for it to be
7 transported to the Latent Fingerprint Section for further
8 evaluation.

9 Q I'm going to ask you be shown what has been
10 marked as People's 34 for identification. Do you recognize
11 that, Detective?

12 A Yes, I do.

13 Q What do you recognize that to be?

14 A This is the CD holder that I collected that night
15 from Ruth Williams' apartment from the shelf of that
16 entertainment center. It has the brown paper bag with my
17 writing on it and it also has my crime scene evidence label
18 with the item number, the date, my initials and the homicide
19 number attached to this case.

20 Q Thank you. Now, with respect to the cigarettes
21 that you had discussed with the jury, the two cigarettes you
22 found on the kitchen table, could you describe to the jury
23 what you did with them?

24 A With the pair of latex rubber gloves on, I
25 carefully collected each individual cigarette butt, placed

1 it in a plastic hinge box that we have in the crime scene
2 truck. I attached a number to it, and put a label and
3 evidence tape on each box.

4 Q The one -- what about the one you found under the
5 body?

6 A I also did the same thing. I carefully collected
7 that with latex rubber gloves, placed it in a plastic hinged
8 box, labeled it and later transported it to police
9 headquarters to be evaluated had by the lab.

10 Q Do you find any other cigarette butts during the
11 course of the investigation that night, either inside the
12 apartment or in the hallway?

13 A Yes, I did.

14 Q Where did you locate that?

15 A I observed in the long narrow hallway, just on
16 the top -- just above the top step, I observed a brown
17 cigarette butt that I also photographed and collected with
18 latex gloves, put in a plastic hinged box, labeled and sent
19 over to the lab for analysis.

20 MR. BIANCAVILLA: I'm going to ask that the
21 witness be shown People's 35 for identification.

22 Q You are being shown what is marked as People's 35
23 for identification, Detective. Do you recognize that?

24 A Yes, I do.

25 Q What do you recognize that to be?

1 A Inside this plastic are the four separate
2 individual plastic hinged boxes that I put each of the four
3 cigarette butts inside of that night. Each hinged box has
4 my writing on it and my crime scene evidence label with
5 initials and the corresponding homicide number attached to
6 this case.

7 Q Okay. Now, Detective, with respect to the photo
8 album that was located on that table, what did you do with
9 that?

10 A The entire photo album I collected with latex
11 rubber gloves, placed the entire album inside a brown paper
12 bag and then transported that over to police headquarters to
13 be processed for Latent Fingerprint Section.

14 MR. BIANCAVILLA: I ask that the witness be
15 shown what has been marked as People's 37 for
16 identification.

17 Q Do you recognize that, Detective?

18 A Yes, I do.

19 Q What do you recognize that to be?

20 A This was the photo album that was on the kitchen
21 table in Ruth Williams' apartment. The photo album was
22 placed in a brown paper bag. It has my writing and name on
23 it. Also on the bag is my crime scene label with the item
24 number, the date, my initials and the corresponding homicide
25 number attached to the case.

1 Q Was there also a glass that you took from that
2 table, wasn't there?

3 A Yes, there was.

4 Q What did you do with that glass?

5 A I took a sample of the contents from the glass.
6 And then I took the glass itself and then placed it in a
7 brown paper bag and transported it over to police
8 headquarters to be processed for latent fingerprints.

9 Q I show you what has been marked as People's 38
10 for identification. Do you recognize that, Detective?

11 A Yes, I do.

12 Q What do you recognize that to be?

13 A This is the glass from the kitchen table at Ruth
14 Williams' apartment that contained some wine. It has my
15 label on it and the brown paper bag that I placed it in that
16 night.

17 Q Now, is that glass in the same condition as it
18 was when you placed it in the paper bag that night?

19 A No, it isn't.

20 Q What is different about it?

21 A A small piece of the glass base has broken off
22 the glass.

23 Q But the glass was intact when you submitted it
24 for identification?

25 A Yes, it was.

1 Q Okay. Detective, you also mentioned that there
2 was some type of a song on the kitchen end table?

3 A Yes.

4 Q I will show you what has been marked as People's
5 36 for identification. Do you recognize that?

6 A Yes, I do.

7 Q What do you recognize that to be?

8 A This is -- this is the song on the piece of paper
9 that appeared on that table next to the photo album that
10 night.

11 Q How do you recognize it to be that, sir?

12 A This has the crime scene item number and the
13 homicide number attached to this case.

14 Q Now, Detective, were there additional items that
15 you also collected when you processed that scene?

16 A Yes, there were.

17 Q Okay.

18 MR. BIANCAVILLA: I'm going to ask that the
19 witness be shown People's 42 for identification.

20 You can put that down for one second,
21 Officer. I missed one piece. The beer bottle.

22 THE WITNESS: Yes.

23 Q Did you collect the beer bottle that night?

24 A Yes, I did.

25 Q What did you do with the beer bottle?

1 A I removed a liquid sample from the Budweiser beer
2 bottle. I then with latex rubber gloves placed the beer
3 bottle in a brown paper bag, sealed it and transported it
4 over to police headquarters for evaluation.

5 Q Please take a look at what has been marked as
6 People's 39 for identification and tell us if you recognize
7 it?

8 A This is the Budweiser bottle. It was placed in
9 the brown paper bag. And has my label attached to the
10 bottle that has my initials, the date and the corresponding
11 case number.

12 Q Okay. Thank you very much. Now, with respect to
13 People's exhibit 41 for identification --

14 THE COURT OFFICER: 42.

15 Q 42. Do you recognize the chart which you were
16 just shown?

17 A Yes, I do.

18 Q What do you recognize that to be?

19 A This is a computer generated diagram of the
20 layout of the apartment, with the corresponding numbers
21 attached to evidence items that I collected that night. I
22 took measurements of the room, located the evidence items.
23 Then with the assistance of another detective at the Crime
24 Scene Unit a diagram was prepared.

25 Q Does that fairly and accurately depict the

1 apartment and where in fact you recovered the various items
2 of evidence from?

3 A Yes, it does.

4 MR. BIANCAVILLA: Judge, we would offer that
5 at this time.

6 THE COURT: Please show that to
7 Mr. Chamberlain.

8 MR. CHAMBERLAIN: No objection, your Honor.

9 THE COURT: Mark it in evidence.

10 (Whereupon, the referred to item previously
11 marked for identification is received and marked
12 People's Exhibit 42 in evidence by the reporter as
13 instructed)

14 THE COURT OFFICER: Received in evidence.

15 MR. BIANCAVILLA: Judge, can we display that
16 for the jury, please?

17 THE COURT: Yes.

18 MR. BIANCAVILLA: May we have the detective
19 step down also, Judge?

20 THE COURT: Yes. You may step down,
21 Detective.

22 (Whereupon, the witness leaves the witness
23 stand.)

24 (Whereupon, People's Exhibit 42 is displayed
25 to the sworn jury and alternates.)

1 Q Detective, can you please explain to the jury
2 generally what they're viewing there in terms of the layout
3 and the red numbers they're looking at?

4 A This is the apartment above Captain Andy's. This
5 is the long set of staircase that you come up through the
6 back door. You go through the narrow hallway. Then there's
7 a door here that leads to the apartment of Ruth Williams.
8 Inside that door is another narrow hallway. There's a
9 bathroom on the north side. As soon as you walk in, the
10 kitchen.

11 All of these red numbered items are evidence
12 items that I collected and appear below at the legend.

13 Here's the kitchen, the. Table with various
14 evidence items that I collected. There's the bedroom. The
15 position of Ruth Williams. Some evidence items collected.
16 The bedding.

17 Also, here's the walls that separate the bedroom
18 from the living room. Some evidence items I collected. The
19 living room with some furnishings. The t.v. cabinet and
20 entertainment section with evidence items numbers attached.
21 And this over here would be the window facing Main Street.

22 Q Now, in the key at the bottom there are some
23 dimensions next to each item that was recovered. Could you
24 explain to the jury what that means and what the reference
25 point would be?

1 A To locate evidence in each room I would take a
2 corner of the room, use it as a reference point, and then
3 locate evidence items north, west, perhaps east or south.

4 The reference point in the kitchen would be this
5 corner here and it's noted by the letters RP. And also in
6 the bedroom, the reference point would be this corner, noted
7 by RP. And then in the living room the reference point was
8 this corner, noted by RP.

9 So, all the evidence items could be located off a
10 reference point.

11 Q Now, did you process that crime scene for
12 fingerprints?

13 A Yes, I did.

14 Q Would you please explain to the jury how you went
15 about processing that crime scene for fingerprints?

16 A After I photographed the scene, collected
17 evidence items that were in plain view and packaged them, I
18 then began to apply fingerprint powder, black powder and
19 gray powder, to various items throughout the bathroom,
20 kitchen, bedroom and living room.

21 Q Let me stop you there. Explain to the jury the
22 difference between black powder and gray powder just so they
23 understand the process you're talking about.

24 A I would use black powder on light colored objects
25 and I would use the gray powder on dark colored objects and

1 glass.

2 Q Please go through with the jury each area that
3 you processed for fingerprints and what the results were.
4 If you need to refer to your notes, please do so.

5 THE WITNESS: Your Honor, I need to refer --

6 THE COURT: Yes. You need to refresh your
7 recollection?

8 THE WITNESS: Yes.

9 A I applied fingerprint powder in the living room
10 to the windows, the interior and exterior windows, the
11 glass, the frame, the window sill. I applied fingerprint
12 powder to the entertainment section, the wall unit, the
13 glass doors, the shelving, the CD player shelf, some of the
14 mica doors and handle, the CD player.

15 Also, in the living room, the wood frame opening
16 on each side I applied fingerprint powder to, and the wall
17 and table around where that answering machine was in the
18 living room.

19 Also, in the bedroom I applied fingerprint powder
20 to the exterior of the dresser, the wood frame opening that
21 separated the kitchen from the bedroom, the computer
22 desk-top, the window, the interior and exterior, the glass,
23 the frame, the sill.

24 In the kitchen I applied fingerprint powder to
25 the refrigerator door, it's side, two plastic drinking

1 containers, the table cover, the windows. There were two
2 windows here that I applied fingerprint powder to. The
3 glass frame and the sill.

4 In the bathroom I applied fingerprint powder to
5 the bathroom door, it's frame, it's handle, the medicine
6 cabinet glass door, the toilet, toilet seat, the two windows
7 that are inside the bathroom.

8 Also, in the hallway I applied fingerprint powder
9 to the entrance door, the frame, the storm door, to the
10 roof, the interior and exterior glass of the storm door, the
11 window in the hallway.

12 Also applied fingerprint powder to areas in the
13 attic. There was a pulldown stairway. And also, two
14 windows, the glass and the frame. The lower entrance door
15 at the bottom of the stairs there was a metal door that I
16 applied fingerprint powder to, both on the inside and
17 outside.

18 Q When you say you processed the doors, how do you
19 process the doors?

20 A What I would do is, based on the color of the
21 door -- in this case they were both light colored -- I would
22 apply black fingerprint powder to almost completely the door
23 area, from top to bottom.

24 Q Door knobs?

25 A Door nobody.

1 Q Now, what were the results of your fingerprint
2 processing of that apartment?

3 A Just the fingerprint processing itself?

4 Q Yes.

5 A I observed -- after I applied fingerprint powder,
6 I observed fingerprints item number 34, which is on the wall
7 that separates the living room from the bedroom. I
8 photographed and collected and lifted a fingerprint at item
9 number 34. I then also collected a fingerprint on the
10 exterior surface of the dresser that I photographed and
11 collected and lifted, and then on the t.v. cabinet.

12 I had applied a light coat of gray powder to the
13 exterior of the CD holder. I observed some fingerprints on
14 that CD case and then submitted it. Other items I just --
15 other items that I felt were conducive to fingerprints I
16 just submitted to the latent fingerprint section without
17 applying fingerprint powder to them.

18 Q But you referred to crime scene items number 34
19 and 35, those were actual lifts that you performed?

20 A Yes.

21 Q Describe for the jury how you did that.

22 A What I did was, after I applied fingerprint
23 powder, I observed what appeared to be a fingerprint or
24 partial fingerprint and then with an advanced camera that
25 takes a one-to-one shot of the photograph, I took a picture

1 of that print. I then took an in -- adhesive lift that we
2 use to lift the fingerprints off the surface and I did that
3 to both the areas of 34 and 35. Took a picture of the
4 prints, then lifted the prints with the adhesive lifts that
5 we have.

6 Q Now, I'm going to show you what has been marked
7 as People's 40 and 41 for identification. Could do you
8 recognize those?

9 A Yes, I do.

10 Q What do you recognize those to be?

11 A These are the actual fingerprint lifts that I
12 took that night. One is item number 34 and one is at 35.

13 MR. BIANCAVILLA: You can be seated, again,
14 Detective. Thank you.

15 (Whereupon, the witness resumes his seat on
16 the witness stand.)

17 Q Now, Detective, after you collect all the
18 evidence what do you do with it?

19 A After all the evidence is collected, it's placed
20 in the crime scene van. Then I drive back to my office in
21 North Bellmore. Paperwork is prepared, typed up. Evidence
22 items I properly packaged and sealed. And then later on
23 it's transported over to police headquarters for further
24 evaluation by the Latent Fingerprint section or to the lab.

25 Q So, you don't perform any analysis on the

1 evidence that you collect at the crime scene?

2 A No, I don't.

3 MR. BIANCAVILLA: Judge, at this time the
4 People would offer what has been marked for
5 identification as from 33 on, Judge, we offer that into
6 evidence.

7 THE COURT: 33 through through 41.

8 MR. BIANCAVILLA: Yes.

9 THE COURT: Show them to Mr. Chamberlain,
10 please.

11 MR. CHAMBERLAIN: Just a very short voir
12 dire, Judge.

13 MR. BIANCAVILLA: I'm finished. I have no
14 further questions.

15 THE COURT: Okay, Mr. Biancavilla.

16 Would you like a voir dire with respect to
17 which ones, Mr. Chamberlain?

18 MR. CHAMBERLAIN: With respect to the
19 location of these in relation to the diagram.

20 THE COURT: Sure.

21 VOIR DIRE EXAMINATION

22 BY MR. CHAMBERLAIN:

23 Q Detective, the diagram you got up here on the
24 board, I think it's 42. Is that DRAWN to scale as far as
25 the apartment goes?

1 A No. That's for illustration purposes only.

2 Q It's not to scale?

3 A That's correct.

4 Q And obviously the hallway that looks quite short
5 is a lot longer than what it shows on that picture?

6 A That's correct.

7 Q It's a lot narrower, right? The diagram does not
8 reflect exactly where these things were located on a scale
9 dimension?

10 A That's correct.

11 Q And with respect to the, I think it's 38, the
12 glass that is broken.

13 A The broken glass.

14 Q The broken glass.

15 A That was on the table.

16 Q That glass was broken after you collected it, is
17 that it? Was it broken at the time you collected it?

18 A No.

19 Q It was not?

20 A No.

21 Q Is there any significance on the break as far as
22 evidentiary character?

23 MR. BIANCAVILLA: Objection.

24 THE COURT: I'm not sure what that means,

25 Mr. Chamberlain.

1 Sustained as to form.

2 Q Other than -- does a break -- was there anything
3 about where the break occurred that you collected evidence
4 from?

5 MR. BIANCAVILLA: Objection.

6 THE COURT: I think I understand the
7 question. Were you collecting -- well, perhaps you can
8 rephrase your question.

9 But, do you understand the question,
10 Detective?

11 THE WITNESS: Well, when I collected the
12 glass, the base of the glass was intact. Somewhere in
13 transport over at Police Headquarters a small portion
14 of that base was chipped off.

15 Q You said you took -- did you take a print from
16 this glass?

17 A The entire glass was submitted to the Latent
18 Fingerprint Section for processing.

19 Q And do you know whether they lifted any prints?

20 MR. BIANCAVILLA: Objection, hearsay.

21 THE COURT: Yes, sustained.

22 Q You indicated you took a sample from the glass?

23 A Yes, I took a liquid sample.

24 Q That was from the contents inside?

25 A Yes.

1 MR. CHAMBERLAIN: All right. I have no
2 objection to the introductory evidence.

3 THE COURT: All right. People's 33, 34, 35,
4 36, 37, 38, 39, 40, and 41 are marked into evidence.

5 (Whereupon, the referred to items previously
6 marked for identification are received and marked
7 People's 33, 34, 35, 36, 37, 38, 39, 40 and 41 in
8 evidence by the reporter as instructed)

9 THE COURT OFFICER: People's 33 through 41
10 are received in evidence.

11 MR. BIANCAVILLA: One more question.

12 THE COURT: One more question,
13 Mr. Biancavilla.

14 MR. BIANCAVILLA: Could we have the Detective
15 stand up.

16 THE COURT: Yes.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. BIANCAVILLA:

19 Q You just testified that this Exhibit 42 is not
20 drawn to scale, is that correct?

21 A Yes.

22 Q Could you remove that from the board, let the
23 jury see the one behind it?

24 Is that a scale drawing of the apartment layout?

25 A Yes, it is.

1 Q Does that fairly and accurately represent the
2 actual layout of the apartment?

3 A Yes.

4 Q Okay. Thank you.

5 THE COURT: All right.

6 MR. CHAMBERLAIN: Based on that last point,
7 Judge?

8 THE COURT: Counsel, come forward a minute.

9 MR. CHAMBERLAIN: Sure.

10 (Whereupon, there is an off the record
11 discussion held at the Bench between the Court and
12 Counsel.)

13 THE COURT: Ladies and gentlemen, at this
14 point we're going to take a very short break. Do not
15 discuss the case among yourselves or with anyone else.
16 Keep an open mind. Do not form or express any opinions
17 until the entire case is completed. Do not read or
18 listen to any accounts of this case, should it be
19 reported in the media. Do not visit or view any place
20 or premises that have been mentioned. You're not to
21 permit any party to discuss this case with you or
22 attempt to influence you. And you must promptly report
23 to the Court any violation thereof.

24 Please follow the court officers. We'll be
25 back very shortly.

1 (Whereupon, the sworn jury and alternates
2 leave the courtroom)

3 [THE] COURT: Detective, you may step down.

4 THE WITNESS: Thank you, sir.

5 (Whereupon, the witness leaves the witness
6 stand)

7 (Whereupon, there is a brief recess taken in
8 the proceedings.)

9 (Whereupon, the following takes place in open
10 court, after a brief recess in the proceedings.)

11 THE CLERK: Case on trial continues. All
12 parties are present. Jurors are not present at this
13 time.

14 People ready?

15 MR. BIANCAVILLA: Ready.

16 THE CLERK: Defense ready?

17 MR. CHAMBERLAIN: Defendant ready.

18 THE CLERK: Ready for the jurors?

19 THE COURT OFFICER: Jury entering.

20 (Whereupon, the sworn jury and alternates
21 enter the courtroom)

22 THE CLERK: Both sides stipulate that all
23 sworn jurors are present and seated properly?

24 MR. CHAMBERLAIN: So stipulated.

25 MR. BIANCAVILLA: So stipulated, your Honor.

1 THE COURT: All right. Ask Detective Downes
2 to come in please.

3 (Whereupon, Detective Downes resumes the
4 stand, having been previously duly sworn, to commence
5 cross-examination testimony as follows:)

6 THE CLERK: Detective, you're reminded you're
7 still under oath.

8 Please have a seat.

9 THE COURT: Cross-examination,
10 Mr. Chamberlain.

11 MR. CHAMBERLAIN: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. CHAMBERLAIN:

14 Q Good morning, Detective.

15 A Good morning, sir.

16 Q You identified a number of photographs in
17 connection with this crime scene. They were not the only
18 photographs. There are many, many more, right?

19 A There are a little over sixty photographs.

20 Q And I'll get back to this after.

21 But, in addition to the photographs, you also
22 collect fingerprints which you already testified to?

23 A That's correct.

24 Q And other evidence which we haven't gone into
25 yet, is that right?

1 A That's correct.

2 Q And it's your job, Detective, as I understand it,
3 to collect evidence, not to analyze or evaluate it. There
4 are other experts that who do that?

5 A Yes.

6 Q Okay. You indicated when you got down there that
7 night, the night of the 13th of April, there were already
8 some detectives there?

9 A Yes.

10 Q One of them Detective McHugh?

11 A Yes.

12 Q Is Detective McHugh the investigating detective
13 on this homicide?

14 A Yes, he is.

15 Q So, he was directing the activities in connection
16 with the investigation?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: If he knows.

19 A Each detective has their own assignment to do.
20 Detective McHugh is assigned to the Homicide Squad and he
21 was the investigating officer.

22 Q As investigating officer, what would her duties
23 be? Wouldn't that be to collect all the evidence?

24 MR. BIANCAVILLA: Judge, I'm going to object.
25 It calls for the operation of someone else's mind.

1 THE COURT: Well, if Detective Downes knows
2 what the investigating detective does with respect to a
3 homicide case, he certainly can respond to that
4 question.

5 A The investigating officer -- Detective McHugh in
6 this case -- is responsible for the overall, entire
7 investigation.

8 Q Okay. Thank you, Detective. Now, with respect
9 to evaluation, the collection of evidence here, did you
10 collect any evidence after the -- your visit to the crime
11 scene after the 13th?

12 MR. BIANCAVILLA: Judge, I'm going to object.

13 THE COURT: No. You mean --

14 MR. BIANCAVILLA: With respect to what case,
15 Judge.

16 MR. CHAMBERLAIN: In this case.

17 THE COURT: With respect to this case, I
18 presume. Is that what we're talking about?

19 MR. CHAMBERLAIN: I'm not talking about
20 anything else, Judge.

21 Yes, this case.

22 THE COURT: I'll permit that.

23 A No. No.

24 Q Nothing after the 13th?

25 A Did I?

1 Q You.

2 A No.

3 Q There were some swabs obtained from the suspect
4 on or about, report says, March 21st, 2000, that would have
5 to be a mistake?

6 MR. BIANCAVILLA: Judge, I'm going to object.

7 THE COURT: Sustained.

8 Q You didn't collect any --

9 THE COURT: The jury should disregard that
10 last statement. The jury should disregard the last
11 statement made by Counsel.

12 MR. CHAMBERLAIN: I withdraw that question,
13 Judge.

14 Q Let me show you --

15 THE COURT: Would you like that marked,
16 Mr. Chamberlain?

17 MR. CHAMBERLAIN: Yes, I would, your Honor.

18 THE COURT: Show it to the witness.

19 MR. BIANCAVILLA: Can I see it after he shows
20 it to the witness.

21 THE COURT: You can see it. Show it to
22 Mr. Biancavilla.

23 (Whereupon, the referred to item is received
24 and marked Defendant's E for identification by the
25 reporter as instructed.)

1 THE COURT OFFICER: Defendant's E is marked
2 for identification.

3 Counsel, come up, please.

4 Detective, step down a moment.

5 (Whereupon, the following takes place at the
6 Bench, between the Court and Counsel:)

7 THE COURT: Mr. Biancavilla?

8 MR. BIANCAVILLA: Judge, that is a report
9 from Scientific Investigation Bureau regarding a sample
10 taken from someone after the 13th of April. He just
11 asked this detective if he collected evidence after the
12 13th of April. He gave him that answer, he said no, I
13 didn't. What is the relevancy of showing him that
14 document?

15 THE COURT: Perhaps Mr. Chamberlain can tell
16 us.

17 MR. CHAMBERLAIN: First of all, Judge, this
18 is a report I was just handed this morning. It says
19 March 21st.

20 MR. BIANCAVILLA: Excuse me, that refers
21 to -- Judge, I turned it over, I specifically said,
22 those are Detective McCarthy's notes, okay, regarding
23 serology.

24 THE COURT: It has nothing to do with
25 Detective Downes.

1 MR. CHAMBERLAIN: I can ask him that.

2 MR. BIANCAVILLA: It has nothing to do with
3 serology. He collected, and you will hear this, he
4 collected material for serology.

5 THE COURT: Can I suggest something to you,
6 Mr. Chamberlain? I don't see the relevancy here with
7 respect to Detective Downes who just testified no more
8 than a couple of minutes ago that he did not take any
9 samples subsequent to that date. Now, this was
10 received by Detective Bazowitz.

11 MR. BIANCAVILLA: That's Basillowitz.

12 THE COURT: You know, and Mr. Biancavilla
13 told you it was notes with respect to Detective
14 McCarthy. They're the ones who you would cross-examine
15 with respect to this. He just said he had nothing to
16 do with subsequent to that date. If you want to ask --
17 well, you know, first of all, it says March 21st, 2000.
18 The alleged incident here occurred on April 12th, 2000.

19 MR. CHAMBERLAIN: That's right.

20 THE COURT: So, this is relevant to nothing.

21 MR. BIANCAVILLA: It's relevant to nothing.
22 What's the point?

23 MR. CHAMBERLAIN: It's a report that I was
24 just handed as Rosario material, Judge.

25 THE COURT: I understand that.

1 MR. CHAMBERLAIN: The other reports we have
2 been given indicate he collected material -- he
3 collected photographs, he collected fingerprints, he
4 collected swabs, he collected materials for DNA. He
5 collected materials.

6 MR. BIANCAVILLA: I never said any of that.

7 MR. CHAMBERLAIN: It's all in the record.

8 THE COURT: I understand.

9 MR. BIANCAVILLA: He collected material for
10 serology.

11 THE COURT: But this is saliva swabs,
12 Mr. Chamberlain. There is no indication whatsoever
13 that he collected -- first of all --

14 MR. CHAMBERLAIN: I asked him what he
15 collected.

16 MR. BIANCAVILLA: No.

17 THE COURT: Mr. Chamberlain, the date of --

18 MR. CHAMBERLAIN: What if I just do this,
19 Judge. What if I hand him this and say, did you
20 collect the material listed on this report?

21 MR. BIANCAVILLA: Judge, it has nothing to do
22 with him. It has absolutely nothing to do --

23 MR. CHAMBERLAIN: I think I'm entitled to ask
24 the witness.

25 MR. BIANCAVILLA: He's not, Judge. All he's

1 doing --

2 THE COURT: I understand. I'll tell you what
3 I will do. You have already marked it. I will let him
4 show him the document and ask him if he --

5 MR. BIANCAVILLA: If you -- let him ask him,
6 first of all, if he recognizes the document. If he
7 says no, then that's the end of the story.

8 MR. CHAMBERLAIN: Maybe he wants to conduct
9 my examination for me.

10 MR. BIANCAVILLA: Just ask admissible
11 questions, Mr. Chamberlain.

12 THE COURT: Counsel, come on, no colloquy. I
13 will let Mr. Chamberlain show him the document and ask
14 him if he recognizes and if he does --

15 MR. CHAMBERLAIN: You're directing me to say
16 does he recognize it?

17 MR. BIANCAVILLA: It's a proper question,
18 Judge. Anything other than that is not proper.

19 THE COURT: You are showing him a document.
20 If he doesn't recognize it or had nothing to do with
21 it, what relevance does it have? It's obvious to me
22 it was performed by another detective. However, you
23 can certainly ask him the question.

24 MR. CHAMBERLAIN: I'm not asking him about
25 the performance. I'm asking him if he collected the

1 swabs that were referred to.

2 MR. BIANCAVILLA: He knows he didn't, Judge.

3 The document says it doesn't refer to him.

4 THE COURT: Mr. Chamberlain, you have -- show
5 him the document and ask him the question as to whether
6 he recognizes it.

7 (Whereupon, the following takes place in open
8 court:)

9 MR. CHAMBERLAIN: I ask the witness be shown
10 this document.

11 THE COURT: Yes.

12 Q Detective, do you recognize that document, what
13 it is?

14 A It's a Police Department Scientific Investigation
15 Bureau Receipt Report.

16 MR. BIANCAVILLA: Judge, I'm going to object.
17 Reading from something not in evidence.

18 THE COURT: Detective, did you have anything
19 to do with the preparation of that document?

20 THE WITNESS: No, I did not.

21 Q Did you have anything to do with the collection
22 of the evidence that is referred to in that document?

23 MR. BIANCAVILLA: Objection.

24 THE COURT: I'll permit that.

25 A No, I did not.

1 Q All right. Thank you, Detective.

2 Now, Detective, I think it's People's 8 refers --

3 MR. CHAMBERLAIN: Can we have the photograph
4 put back up there?

5 THE COURT: You would like People's 8.

6 MR. CHAMBERLAIN: It's all on the board.

7 THE COURT: Could you place the board up on
8 the easel for Mr. Chamberlain?

9 Do you want it on the easel?

10 MR. CHAMBERLAIN: Are you looking for
11 People's 8?

12 MR. BIANCAVILLA: That's People's 3.
13 People's 8 is mounted on.

14 MR. CHAMBERLAIN: That's correct.

15 MR. BIANCAVILLA: It was mounted on, People's
16 31.

17 MR. CHAMBERLAIN: Perhaps if I can have the
18 district attorney put on the viewer.

19 MR. BIANCAVILLA: The photographs are
20 mounted, Judge.

21 THE COURT: They're mounted at the time. If
22 you want a particular one, you can take it off the pin
23 if you want.

24 MR. BIANCAVILLA: It's not pinned anymore.
25 They were falling off.

1 THE COURT: Okay.

2 Q Do you recall People's 8, Detective?

3 A Yes, I do.

4 Q Is that the one of all the photographs mounted on
5 that board that has a red dot as well as blue dot?

6 THE COURT: Detective Downes, perhaps if you
7 got down into the well, it might be easier so you can
8 look at it simultaneously with Mr. Chamberlain's
9 questions.

10 A Okay.

11 (Whereupon, the witness leaves the witness
12 stand.)

13 A I recognize that photo, yes.

14 Q And you indicated on direct that you took that
15 from approximately twenty-five feet away?

16 A Approximately, yes.

17 Q Did you -- the photograph next to it is People's
18 what, the number right on the --

19 MR. BIANCAVILLA: There's a number right on
20 the blue dot.

21 Q Number of the blue dot, Detective?

22 A This one here? This one here is 13.

23 Q 13. That was a picture taken from the vicinity
24 of the doorway, looking out toward the parking lot, is that
25 correct?

1 A Yes, it is.

2 Q Did you take any photographs from the parking lot
3 looking in toward that doorway?

4 A This photograph here, People's 20, is taken from
5 the general vicinity of that sidewalk, that would show this
6 opening. This photograph would show this opening. This is
7 a photograph westbound. This is a photograph eastbound.

8 Q Is that People's 20, the first one?

9 A 12.

10 Q That was taken from the position approximately
11 between the dividing line between the Downtown and Captain
12 Andy's?

13 A That's correct.

14 Q And approximately how far away were you when that
15 photograph was taken?

16 A I have to refer to my paperwork. Do we know what
17 photograph number that is?

18 MR. BIANCAVILLA: Just flip it up.

19 A That's approximately thirty feet.

20 Q Thirty feet?

21 A Yes.

22 Q Okay. And I'm going to show you Defendant's C in
23 evidence, Detective, and ask you if that photograph also
24 shows the dividing line between Captain Andy's and the
25 Downtown?

1 MR. BIANCAVILLA: Objection. The photographs
2 speak for themselves, Judge.

3 THE COURT: Can I see the photo?

4 I'm not sure what you mean, Mr. Chamberlain,
5 by dividing line. Are you talking about property
6 lines?

7 MR. CHAMBERLAIN: It shows where one building
8 ends and the other property starts.

9 MR. BIANCAVILLA: I'm going to object, Judge.
10 The photo speaks for itself.

11 THE COURT: Well, I'll let the Detective
12 answer the question.

13 A What's the question, sir?

14 Q Does that photograph accurately represent the
15 line between Captain Andy's and Downtown taken from
16 approximately the same position that you were in when you
17 took People's 12?

18 A Yes, it does.

19 Q All right. Thank you, Detective.

20 I'm going to show you Defendant's B in evidence.
21 And I ask you to look at that photograph. Does that
22 photograph accurately represent the view of the back of the
23 Downtown and Captain Andy's from the parking lot?

24 A Yes, it does.

25 Q And if a person were standing in a position

1 either where this X is marked on that photograph or further
2 out alongside a car where that X was planted, in the third
3 row of that parking lot, would this picture accurately
4 represent the back of that -- the view of the back of
5 Captain Andy's?

6 MR. BIANCAVILLA: Objection.

7 THE COURT: Sustained. No foundation,
8 Mr. Chamberlain.

9 Q Detective, did you take any picture -- did you
10 take any picture from the third row of the parking lot
11 viewing Captain Andy's?

12 A No, I did not.

13 Q Would be able to -- did you ever measure the
14 distance from the third row or approximately that area to
15 the back of Captain Andy's?

16 A No, I didn't.

17 Q Can you, as you stand here today, estimate that
18 distance, looking at that photograph?

19 A No, I could not.

20 MR. CHAMBERLAIN: Thank you.

21 (Whereupon, the detective resumes his seat on
22 the witness stand.)

23 Q It's certainly more than the twenty-five feet
24 from where you took that photograph, right?

25 MR. BIANCAVILLA: Objection.

1 THE COURT: Sustained.

2 Q Now, in addition to these photographs, did you
3 also take photographs of the victim's vehicle?

4 A Yes, I did.

5 Q And did you also do a crime scene analysis of the
6 contents of that vehicle?

7 MR. BIANCAVILLA: Objection.

8 THE COURT: I'll permit that.

9 A I'm not the detective that did that analysis.

10 Q Not the analysis. But, did you collect the
11 evidence that was used for that analysis?

12 A No, I did not.

13 Q Do you know who did that, Detective?

14 A Detective -- I believe it was Detective Smith.

15 Q I'm going to show you a page -- I'm going to show
16 you a document and ask you if you recognize it.

17 A Yes, I do recognize this.

18 Q Is that -- would you tell the Court and jury what
19 that document is?

20 MR. BIANCAVILLA: Objection.

21 THE COURT: You can't read from a document
22 not in evidence.

23 Q What does it represent?

24 MR. BIANCAVILLA: Objection.

25 Q Is it a document kept in the regular course of

1 business by the police department?

2 A Yes.

3 Q Is it a report of the analysis -- the contents
4 collected from the victim's car?

5 MR. BIANCAVILLA: Objection.

6 THE COURT: Sustained. That's not the proper
7 way, Mr. Chamberlain.

8 Q That is a document kept in the regular course of
9 business of the police department?

10 A Yes, it is.

11 Q And it was a document kept in the regular course
12 of business in connection with the investigation of this
13 particular homicide, is that correct?

14 A Yes, it was.

15 MR. CHAMBERLAIN: I offer that in evidence.

16 MR. BIANCAVILLA: Objection.

17 THE COURT: You left out one of the
18 questions.

19 Sustained.

20 Q Are you familiar with the evidence collected by
21 Detective Smith and referred to in that document?

22 A Yes, I am.

23 Q And is that accurately reflected evidence that
24 was collected by him to your knowledge?

25 MR. BIANCAVILLA: Objection.

1 THE COURT: Sustained.

2 MR. CHAMBERLAIN: If he knows.

3 THE COURT: Counsel, come forward.

4 (Whereupon, the following takes place at the
5 Bench, between the Court and Counsel:)

6 THE COURT: Mr. Chamberlain, in order to get
7 a business ruling in, there's three questions.

8 MR. BIANCAVILLA: I object beyond that.
9 First of all, it's not a business record.

10 THE COURT: I'm not up to that yet. I don't
11 even know, we haven't gotten that far.

12 MR. BIANCAVILLA: Thank you.

13 MR. CHAMBERLAIN: What are the three
14 questions, Judge?

15 THE COURT: Would you like to borrow my
16 Richardson's?

17 MR. CHAMBERLAIN: No, not right now.

18 MR. BIANCAVILLA: Well, let's move along,
19 Judge.

20 THE COURT: Now, I don't have to practice law
21 for you. There is a proper procedure in order to get
22 something into evidence by a business record rule.

23 MR. BIANCAVILLA: When it's a business record
24 rule.

25 THE COURT: I don't know, we haven't gotten

1 that far.

2 MR. CHAMBERLAIN: Okay.

3 THE COURT: It depends on what the answers
4 from the detective are, as to what he answers, as to
5 whether this is admitted pursuant to a business record
6 rule.

7 Now, if you would like to borrow my
8 Richardson, you're more than welcome. Otherwise, let's
9 move on.

10 MR. CHAMBERLAIN: All right.

11 (Whereupon, the following takes place in open
12 court:)

13 Q Detective, you indicated that you took latents
14 from various locations in this apartment?

15 A Yes.

16 Q I'm going to show you a document and ask you if
17 you recognize this document?

18 THE COURT: Defendant's F, we'll mark it.

19 MR. CHAMBERLAIN: Mark it, please.

20 MR. CHAMBERLAIN: I'm going to ask that that
21 succeeding document, I will give you the number of
22 pages.

23 THE COURT: How many pages would you like to
24 be marked?

25 MR. CHAMBERLAIN: A total of five pages,

1 Judge.

2 (Whereupon, the referred to item is received
3 and marked Defendant's Exhibit F for identification by
4 the reporter as instructed.)

5 THE COURT OFFICER: Defendant's F marked for
6 identification.

7 Q Do you recognize those documents?

8 A Yes, I do.

9 Q And the first document, is that signed by you?

10 A Yes, it is.

11 Q And is that a record of the fingerprints, places
12 from where you took the fingerprints?

13 MR. BIANCAVILLA: Objection.

14 THE COURT: You can't read from a document
15 that is not in evidence.

16 MR. CHAMBERLAIN: I'm not asking him to read.

17 MR. BIANCAVILLA: He's telling him what it
18 is.

19 THE COURT: In essence, you're telling
20 everybody here what is in that document.

21 MR. CHAMBERLAIN: He already testified to it.

22 THE COURT: We run by rules of evidence,
23 Mr. Chamberlain.

24 Q Detective, go on to the next page, if you will.

25 Is that a record kept in the regular course of business by

1 the police department?

2 A Yes, it is.

3 Q Is that a record of the evidence you collected?

4 MR. BIANCAVILLA: Objection.

5 THE COURT: Sustained, as to that question.

6 Q Detective, in addition -- you testified to
7 various -- you testified to the collection of fingerprints
8 at various locations; did you also collect hairs?

9 A No, I did not.

10 Q You didn't -- was there a different person
11 collecting hairs from the location, from the crime scene?

12 A Not to my knowledge, no.

13 Q Were there any -- to your knowledge, there were
14 no hairs collected for submission for evaluation by other --

15 MR. CHAMBERLAIN: Withdrawn.

16 MR. BIANCAVILLA: Objection.

17 MR. CHAMBERLAIN: Let me rephrase.

18 Q There were no hairs collected from the crime
19 scene to your knowledge, is that your testimony?

20 MR. BIANCAVILLA: Objection.

21 THE COURT: I'll permit that question. But
22 I'm going to sustain as to form.

23 Q Were there any hairs collected at the crime scene
24 to your knowledge?

25 MR. BIANCAVILLA: Objection.

1 THE COURT: Overruled.

2 A No, there was not.

3 Q Were there any fibers collected from the crime
4 scene, do you know?

5 A There was evidence submitted to be evaluated for
6 hairs and fibers.

7 Q Do you recall what that evidence was?

8 A Yes.

9 THE WITNESS: If I may, I will refer to my
10 evidence sheets.

11 THE COURT: Yes, you may refresh your
12 recollection.

13 A From the bedroom of Ruth Williams' apartment
14 there were four brown pillowcases from the bed that I
15 submitted to the lab to be evaluated for the presence of any
16 serology evidence and hairs and fibers. I also submitted a
17 blanket from the bed in the bedroom of Ruth Williams. That
18 bed also was to be evaluated for any serology or hairs and
19 fibers at the lab. I also submitted the top sheet from the
20 bed of Ruth Williams to be tested and analyzed for any
21 serology, hairs and fibers. I also submitted the bottom
22 sheet from that bed to also be tested at the lab for
23 serology, hairs and fibers.

24 Q What about the ligature cord around the victim's
25 neck, was that submitted by you or tested by the --

1 submitted by you for testing by you or by anybody else to
2 your knowledge?

3 A That went with the body to the morgue.

4 Q Did you do anything with respect to taking
5 evidence from the ligature cord, collecting evidence from
6 that cord at the scene before the body was taken?

7 A No, I just took photographs of that ligature
8 cord.

9 Q Detective, after your collection of evidence on
10 the 13th of April, you collected no other evidence in this
11 case, is that correct?

12 A That's correct.

13 Q And you had nothing to do with the evaluation of
14 any of this evidence?

15 A No, I did not.

16 Q The two fingerprints that you lifted, you turned
17 over to the Fingerprint Section of the Scientific
18 Investigation Bureau?

19 A Yes, I did.

20 Q And the other latent you observed that you
21 already referred to, you also turned over that information?

22 A That's correct.

23 Q In your professional opinion, as an expert in the
24 crime scene unit in connection with collection of this, you
25 did a thorough job in collection of any evidence you find

1 with respect to this homicide?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Sustained.

4 THE COURT: You haven't laid a foundation,
5 Mr. Chamberlain.

6 Q Did you collect all the evidence you thought was
7 available, if possible, in that capacity?

8 MR. BIANCAVILLA: Judge, I'm going to object.

9 THE COURT: Sustained.

10 Q After your collection of the evidence, you were
11 never asked to go back and get any further evidence, were
12 you, by Detective McHugh or anybody?

13 A No, I was not.

14 MR. CHAMBERLAIN: All right. Thank you.

15 Nothing further.

16 THE COURT: Any redirect, Mr. Biancavilla.

17 MR. BIANCAVILLA: No, Judge.

18 THE COURT: Thank you, Detective Downes. You
19 can step down.

20 (WITNESS EXCUSED)

21 THE COURT: Mr. Biancavilla, call your next
22 witness, please.

23 MR. BIANCAVILLA: Detective Costello.

24 C H A R L E S C O S T E L L O, Detective, called as a
25 witness by and on behalf of the People, having been

1 first duly sworn, testified as follows:

2 THE COURT OFFICER: Please state your name,
3 spell your last name, shield number and command.

4 THE WITNESS: Detective Charles E. Costello,
5 Junior. Shield number 682. Last name is
6 C-O-S-T-E-L-L-O. Nassau County Police Department
7 Latent FINGERPRINT Section.

8 MR. BIANCAVILLA: May I inquire, your Honor?

9 THE COURT: Yes.

10 DIRECT EXAMINATION

11 BY MR. BIANCAVILLA:

12 Q Detective Costello, how long have you been a
13 member of the Nassau County Police Department?

14 A Twenty-nine years.

15 Q How long have you been a member of the Latent
16 Fingerprint Section?

17 A Eighteen years in July.

18 Q Can you explain to the jury what training you
19 have had in your area of expertise?

20 A My first assignment to the Latent Fingerprint
21 Section, I was give training by members already assigned to
22 the unit in the receiving, safeguarding, processing
23 evaluation and identification of fingerprint evidence.

24 I have attended a one week basic classification
25 school sponsored by the FBI. I have attended an advanced

1 one week latent fingerprint school sponsored by the FBI. I
2 attended a three week administrative advanced latent
3 fingerprint school sponsored by the FBI at the FBI Academy
4 in Quantico, Virginia. I attended an advanced palm
5 identification school sponsored by the New York State
6 Department of Criminal Justice Services in Albany, New York.
7 I have attended various computerized fingerprint schools
8 sponsored by the Printrak Corp, P-R-I-N-T-R-A-K. I have
9 attended additional computerized schools sponsored by the
10 Morpho Corporation.

11 I'm a New York State qualified latent fingerprint
12 examiner. I'm a member of the International Association for
13 Identification. I'm a member of the New York State Division
14 of the International Association for Identification. I am a
15 New York State Certified Bureau of Municipal Police, Police
16 Instructor. In that capacity I teach fingerprints,
17 instruct, give demonstrations --

18 MR. CHAMBERLAIN: I will concede the
19 Detective's expertise in the fingerprint --

20 MR. BIANCAVILLA: Judge, Mr. Chamberlain is
21 interrupting.

22 THE COURT: Mr. Biancavilla has a right to
23 elicit the information.

24 Q Please continue.

25 A I teach, instruct, give demonstrations to new

1 recruits, police officers, detectives, investigators, other
2 individuals as instructed or requested by my department.

3 I have a Bachelor of Science Degree from the
4 State University of New York. I have additional five
5 college credits in the science of fingerprints from the
6 University of Virginia. I have read books, magazine
7 articles, journals, newspaper articles brought to my
8 attention relative to the science of fingerprints. I have
9 previously testified relative to my fingerprint work in
10 grand jury, district court, county court and federal court.

11 Q And approximately how many fingerprints have you
12 analyzed over your career with the Nassau County Police
13 Department?

14 A Excess of a million.

15 Q Now, could you explain to the jury what is a
16 fingerprint?

17 A Ink fingerprint or --

18 Q Break it down.

19 A Okay. The underside of your hand, underside of
20 your fingers, the soles of your feet contain friction skin.
21 The friction skin is what we deal with as latent fingerprint
22 examiners.

23 An ink fingerprint is an intentional recording of
24 an area of friction skin you wish to catalog or keep for
25 future reference, examination, comparison. It's normally

1 achieved by applying a transfer agent, such as printer's
2 ink, to the area of friction skin you wish to record. It's
3 done by applying that ink, or ink preferably, to the
4 friction skin and rolling or placing that area on a
5 preferably a white piece of cardboard or white paper for
6 pertinent recording.

7 Q What is a latent fingerprint?

8 A A latent fingerprint is an unintentional or
9 chance recording of an area friction skin that is left on an
10 item through transfer when you touch the item.

11 Q How is it left?

12 A Generally, it can be a sweat print, perspiration
13 in the area of friction skin I have described. Your sweat
14 pores are in the ridges, which are the high areas of the
15 skin. And that's what exudes out or excretes itself out on
16 to the ridges. And that perspiration will be left or could
17 be left on the item as you touch it. You could eat a
18 sandwich, a greasy sandwich for lunch. The grease, the oil
19 from the sandwich, butter type of substance, could adhere to
20 your skin. You could transfer that when you touch an item,
21 paint, cork, any sort of substance. Touch your face in the
22 right area where the oils are, that could adhere to the
23 skin, that would possibly transfer when you touch an item.

24 Q And what factors affect whether or not an
25 individual will leave a fingerprint?

1 A Conditions outside. Today it's a humid day.
2 Possibly, you would have a higher collection of moisture on
3 the area of your skin, which could be good or bad. If
4 there's too much, it would leave deposits which would look
5 like dots, almost like rain on a window when it's touched.
6 Because of the excess ridges of moisture on the ridges, it
7 would be difficult to identify, if identifiable at all.

8 You could also have too little or no moisture or
9 transfer agent on the tool, thereby the hand or the skin
10 would be dry when it touches the item, you would have
11 nothing to transfer.

12 Q What about surfaces, Detective?

13 A Surfaces, generally, we say clear, hard surfaces
14 are good. But we have success with other items as well.
15 You don't always leave identifiable prints on items.

16 Aside from what I started saying about the
17 perspiration and the sweat, if I was to pick up this
18 microphone, you would see that only a small portion of that
19 friction skin I described to you, my fingers, touched that
20 microphone. Because of that the microphone having weight to
21 it, when I pick it up, I'm compressing the friction skin,
22 thereby pushing the ridges into what we call the furrows,
23 the low area of the skin, which would obliterate or possibly
24 obliterate the detail that would be transferred to the item.

25 I could touch it in a sliding motion, which would

1 cause it to smear or smudge. Again, eradicating the detail
2 that may have been left had a clean touch been made.

3 I could be wearing gloves, thin gloves, heavy
4 gloves. Items could be dirty, too dirty to leave or for the
5 perpetration or for the transfer agent to get through them.
6 You could wipe off an area that you have touched, if you
7 know you have touched it.

8 A great many reasons as to why you would not
9 leave identifiable prints.

10 Q If connection with this case, Detective, did you
11 examine and evaluate various pieces of evidence?

12 A Yes, I did.

13 Q I'm going to show you People's Exhibit 38 in
14 evidence. Do you recognize that?

15 A It's the drinking glass on the table at the
16 scene.

17 Q Did you perform a fingerprint analysis of that
18 drinking glass?

19 A Yes, I did.

20 Q Just briefly explain to the jury how you
21 performed that fingerprint analysis?

22 A I applied powders to the glass as a processing
23 technique. I recovered one identifiable fingerprint on the
24 glass, subsequently compared and identified the print on the
25 glass to the deceased in this case. It was her print.

1 Q Thank you. That would be the print of Ruth
2 Williams on that glass?

3 A Yes.

4 Q I ask that the witness be shown People's 36 in
5 evidence.

6 You're being shown what is in evidence as
7 People's 36. Do you recognize that?

8 A Yes, I do.

9 Q What do you recognize that to be?

10 A It's a piece of paper that was located on the
11 kitchen table at the scene of the crime.

12 Q And could you briefly describe for the jury the
13 analysis you performed on that?

14 A I used a chemical substance that we use to
15 recover latent impressions on paper called ninhydrant. I
16 dipped or sprayed the paper item, this piece of paper, with
17 that chemical. And what happens is, the -- if it reacts
18 with the amino acid present in the sweat on the hand at the
19 time you touched something, that reaction causes a
20 coloration which I then look at to see if any identifiable
21 prints have been made.

22 Q And were you able to find any identifiable prints
23 on that paper?

24 A Yes.

25 Q Were you able to match them with anyone?

1 A No, I have not.

2 Q Thank you.

3 MR. BIANCAVILLA: I ask that the witness be
4 shown People's 37 in evidence.

5 Q Do you recognize that?

6 A Yes, I do.

7 Q What do you recognize that to be?

8 A It's the photo album that was located on the
9 kitchen table.

10 Q And did you process that photo album?

11 A Yes, I did.

12 Q Explain to the JURY how you processed the photo
13 album?

14 A With the photo album I used a process we use
15 which is super glue. basically, I call it in layman's terms
16 super glue. That you commonly use in your own home. What
17 we do or what I do, I put it in a pot with a little dish,
18 heat it up. It fumes. The palmerization that takes place,
19 the fogging, so to speak, adheres to material substances
20 that could be on the items that I am processing at that
21 time. I put the photo album and the pages into the chamber
22 in order to identify -- develops identifiable prints. I was
23 successful in recovering identifiable prints on four pages
24 from the photo album.

25 Q Were you able to match them up?

1 A Two have been identified, two remain open.

2 Q And the two that were identified?

3 A One belongs to John Marks, the other belongs to
4 Steven Schwartz.

5 MR. BIANCAVILLA: I ask the witness be shown
6 People's 34 in evidence.

7 Q Do you recognize that?

8 A Yes, I do.

9 Q What do you recognize that to be?

10 A The CD case recovered from the scene.

11 Q And did you analyze that?

12 A Yes, I did.

13 Q What type of analysis did you perform on the CD
14 case?

15 A Again, I used super glue and some gray powder on
16 the item. I recovered one identifiable fingerprint on that
17 CD case.

18 Q And who was that identifiable fingerprint of?

19 A Compared identified to the known inked
20 impressions of John Kane.

21 MR. BIANCAVILLA: Finally, I ask that the
22 witness be shown People's 39 in evidence.

23 Q Do you recognize that?

24 A Yes, I do.

25 Q What do you recognize that to be?

1 A It's the bottle from the kitchen table recovered
2 from the scene.

3 Q And did you process that bottle?

4 A Yes, I did.

5 Q How did you process that bottle?

6 A With powders.

7 Q And were you able to recover anything from that
8 bottle?

9 A Nothing.

10 Q Excuse me?

11 A I recovered no identifiable prints on the bottle.

12 Q Can you describe for the jury glass as a surface
13 to obtain fingerprints and is it a good surface, is it not a
14 good surface?

15 A As I said, generally, a clean hard surface,
16 smooth, would be good for prints. It depends on how it is
17 touched, as I said also, whether you would leave
18 identifiable prints on it or what was done after it was
19 touched.

20 Q What things would affect whether or not there
21 were prints on the bottle?

22 A If the bottle had been cold and it was a warm
23 day, you could have condensation on the bottle, on the
24 bottle. It would almost have the same effect as having too
25 much moisture on your hands. You would be putting your

1 hands into that moisture and leaving a smudge. You could
2 wipe off the bottle if you had touched it. You could have
3 possibly been gripping it too hard.

4 Q And you found no evidence of any fingerprints on
5 it?

6 A No.

7 MR. BIANCAVILLA: And I ask that the witness
8 be shown People's 40 and 41 in evidence.

9 Q Do you recognize People's 40 and 41, Detective?

10 A They're the lifts recovered from the scene in
11 this case.

12 Q Okay. And could you describe briefly to the jury
13 how you examined those lifts?

14 A The lifts are taken from the scene and
15 photographed by crime scene members. When they're brought
16 to my office, what I do is, under magnification and good
17 lighting I evaluate, which means, I look at the impressions
18 that are in the photo and the lifts to see if there are
19 identifiable impression on either one. In this case, either
20 one. And there were no identifiable impressions on the
21 items, on the lifts.

22 Q On those lifts, correct, on People's 40 and 41?

23 A No, nothing identifiable.

24 Q Okay. You examined other evidence in this case
25 for fingerprint evidence, Detective?

1 A Yes, I did.

2 Q What other items did you examine?

3 A Numerous.

4 Q Do you have your notes?

5 A Yes.

6 Q Could you refer for your notes, please?

7 A Some of the evidence that I examined, or the
8 other evidence I examined, were telephone base receiver, and
9 there was mini cassette inside that telephone base;
10 telephone jack and wires; Hershey metal can; a cassette tape
11 and box; CD case that was indicated, the case already
12 mentioned; there was a brown button; a paper with writing on
13 it; one other pieces of paper, you have already seen today;
14 another piece of paper with writing on it; an Allstate bill;
15 a cardboard Prodigy CD; photo album with four film envelopes
16 inside it; one memorial card; and the photo album had
17 fifty-two pages inside of it; black ceramic ashtray; a
18 candle with glass holder; a drinking glass; Budweiser
19 bottle, you have seen; wine -- two wine bottles and a black
20 telephone receiver.

21 I also examined seven greeting cards. One Macy's
22 gift note. One small white envelope. One handprinted note.
23 One yellow ball. One shopping bag. One plug in smiley
24 face. One Macy's gift card. Two wizard gift boxes. Four
25 Newsday pages, pages out of the Newsday newspaper. One

1 beanie bag with tag. And one black plastic bag.

2 Q That's all the evidence you examined in the case?

3 A Yes.

4 MR. BIANCAVILLA: Okay, thank you. I have no
5 further questions of this witness.

6 THE COURT: Mr. Chamberlain.

7 MR. CHAMBERLAIN: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY MR. CHAMBERLAIN:

10 Q Detective, 40 and 41 that you just referred to a
11 few minutes ago, what were they?

12 A Are they the lifts?

13 Q They were the ones, the prints, lifted at the
14 scene, correct?

15 A Those were the lifts, correct.

16 Q What were they lifted from?

17 A Again, I will refer to my notes.

18 One of the lifts was from the wooden door frame,
19 wooden frame doorway, opening, at the living room.

20 Q Between the living room and the bedroom?

21 A I'm going from what is written here, the item is
22 from a mica closet door in the bedroom.

23 Q Now, all the items you just mentioned, you
24 couldn't get any lifts from at all, is that correct? The
25 ones you just mentioned at the tail end of your direct

1 examination?

2 A I also included the items that I did get lifts.

3 Q Yeah. But, I mean, the other items you referred
4 to in one question, you read out a list. You got no prints
5 from them at all?

6 A No. Other than what was previously mentioned.

7 Q You went back to the beer bottle. You indicated
8 that there are no identifiable prints, and you indicated
9 there are various reasons why there wouldn't be.

10 MR. BIANCAVILLA: Judge, I object. He did
11 not say there were no unidentifiable prints.

12 MR. CHAMBERLAIN: He did not say no
13 unidentifiable prints?

14 THE COURT: Let's ask the Detective.

15 Q Is that correct, there were no unidentifiable
16 prints? Is that a correct statement?

17 A There was nothing identifiable on there.

18 Q Can you tell the difference between when
19 something is wiped off and when something is identified?

20 A Sometimes.

21 Q In evaluating this bottle, did it appear to have
22 been wiped off?

23 A I don't recall.

24 Q You don't recall. Okay. The bottle was open?

25 A Yes, I believe.

1 Q Do you know if there was any liquid in it?

2 A I don't think I had any liquid in it. I don't
3 know about when it was found.

4 Q Would it have made a difference to you in
5 evaluating how prints would have been left or whether they
6 had been deliberately removed whether there had been liquid
7 in it?

8 A Would a substance being in the bottle make any
9 difference to me?

10 Q You indicated if the bottle was cold something
11 might happen. I believe that would -- I said, you indicated
12 before that if the bottle were cold, that would affect
13 prints. I would take it, that would be from a cold liquid
14 inside?

15 A Again, maybe I can clarify what I meant by that.
16 If it's warm, just think about in your own home. If you
17 take something out of the freezer or out of your
18 refrigerator on a hot day, the cooling of the can or the
19 bottle, in this case, you could possibly get that
20 condensation on the outside of the item that is cold and now
21 brought out to the hot, to the heat.

22 Q All right. You have mentioned that you were able
23 to identify prints from two other persons, John Marks and
24 Stefan Schwartz. Who is John Marks?

25 MR. BIANCAVILLA: Objection.

1 THE COURT: Only if he knows.

2 MR. BIANCAVILLA: Judge, it's hearsay.

3 THE COURT: Actually, I'm going to sustain

4 that

5 Q You were the police expert identifying
6 fingerprints, latents, taken at the scene in this case, is
7 that correct?

8 A I processed and developed prints, yes.

9 Q You were looking for certain fingerprints, I take
10 it?

11 A I was looking for any identifiable prints.

12 Q How do you identify a print that you pick as
13 matching a particular individual?

14 A I do a comparison with known inked impressions
15 and with the unknown latent impression from the item I'm
16 examining.

17 Q And did you do that with respect to this person
18 by the name of Marks?

19 A Yes.

20 Q And?

21 A He's one of the people identified.

22 Q And what -- who did you identify? What did you
23 identify him as?

24 MR. BIANCAVILLA: Objection.

25 THE COURT: I'll permit the question with

1 respect to, as to what the detective used as to
2 identify.

3 Q What did you use to identify?

4 A I used a known fingerprint of John Marks.

5 Q From where?

6 MR. BIANCAVILLA: Objection.

7 THE COURT: Sustained.

8 Q When did you identify John Marks as a person who
9 had left prints in the apartment?

10 A I believe it was April 15th.

11 Q Okay?

12 A April 15th.

13 Q Did you have anything further to do with the
14 investigation of John Marks yourself?

15 A No.

16 Q Who was the detective that that investigation was
17 turned over to?

18 A Should have been Detective McHugh.

19 Q Jack McHugh. What about Stefan Schwartz. How
20 did you identify his fingerprints?

21 A Again, the known inked impressions of Stefan
22 Schwartz were compared with the unknown latent impression I
23 was comparing at the time. It was identified to Stefan
24 Schwartz.

25 Q And do you now know who Stefan Schwartz is?

1 MR. BIANCAVILLA: Objection.

2 Q All right. Did you identify that at the same
3 time or at some subsequent time?

4 A Subsequent.

5 Q Could you tell us when?

6 A May 3rd this year.

7 Q May 3rd, 2002?

8 A Yes.

9 Q Did that come from some prior record that was
10 already on file on May 3rd?

11 MR. BIANCAVILLA: Objection.

12 THE COURT: Sustained.

13 Q Can you tell us how you became aware of John --
14 I'm sorry, Stefan Schwartz's latent fingerprint record on
15 May 3rd of this year?

16 MR. BIANCAVILLA: Objection.

17 THE COURT: Sustained.

18 Q Detective, when you are checking for latents to
19 compare them with known prints, you review prints that are
20 already on file with your department, is that correct?

21 MR. BIANCAVILLA: Objection.

22 THE COURT: Sustained.

23 Q How did you become aware of a particular type of
24 a print, without getting into --

25 MR. BIANCAVILLA: Judge, I'm going to object.

1 MR. CHAMBERLAIN: All right.

2 THE COURT: How he became aware is not
3 relevant, Mr. Chamberlain.

4 Sustained.

5 Q In any event, Detective, you turned that
6 information over to Detective McHugh also, I take it?

7 A Yes, I did.

8 Q So, you had nothing to do with investigating this
9 case over and above the information you relayed here to this
10 Judge and jury about the prints you collected at the scene?

11 A No. Whatever I did on the case, I advised them,
12 and that was it.

13 Q You mentioned a whole list of things, Detective.
14 Was there a ligature cord -- was there an attempt to lift
15 prints from a ligature cord to your knowledge?

16 A I don't -- I got a telephone cord, as I
17 described. I don't know if it's the cord you're
18 questioning.

19 Q I think the telephone cord, we have the cord in
20 evidence.

21 MR. CHAMBERLAIN: Do we have the cord in
22 evidence?

23 MR. BIANCAVILLA: No.

24 Q Okay, the -- assuming the telephone -- withdrawn.

25 The telephone cord you got, was there an attempt

1 to lift prints from that?

2 A Yes.

3 Q Okay. Who did that?

4 A I did.

5 Q And when was that done?

6 A April 14th, 2000.

7 Q And what was the result of that?

8 A There was negative for identifiable prints. You
9 have the plastic cord, thin plastic cord. You know, even
10 something similar to this, I believe it was flat and gray.
11 There's not a lot of area for which you can touch the item.
12 Again, depending on how you are grabbing it, you could
13 slide, you could have too much pressure on it.

14 Q Can you tell us when you attempted to get the
15 print from the cord, what date, do you have any record of
16 that?

17 A April 14th.

18 Q After you finished with the cord did you do
19 something with it?

20 A The cord would have been given to Detective
21 McHugh.

22 Q You don't know of other tests that may or may not
23 have been performed on that?

24 A No, I don't.

25 MR. CHAMBERLAIN: Nothing further.

1 Thank you very much, Detective.

2 THE COURT: You're welcome.

3 THE COURT: Mr. Biancavilla, any redirect?

4 MR. BIANCAVILLA: No redirect.

5 THE COURT: Thank you very much, Detective.

6 You may step down.

7 (WITNESS EXCUSED)

8 THE COURT: Ladies and gentlemen, at this
9 point we're going to stop for lunch and ask you to be
10 back here at two o'clock.

11 Again, don't discuss the case among
12 yourselves or with anyone else. Keep open minds. Do
13 not form or express any opinions until the entire case
14 has been completed. Do not read or listen to any
15 account, should it be recorded in the media. Do not
16 visit or view any places or premises mentioned. You're
17 not to permit any party to discuss this case with you
18 or attempt to influence you. You must promptly report
19 to the Court any violation thereof.

20 Have a nice lunch. We'll see you at two.

21 THE COURT OFFICER: Jurors, follow me.

22 (Whereupon, the sworn jurors and alternates
23 leave the courtroom.)

24 THE COURT: Counsel, see you at two.

25 MR. BIANCAVILLA: Thank you, Judge.

1 (Whereupon, there is a luncheon recess taken
2 in the proceedings. The trial is adjourned until 2:00
3 p.m.)
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A F T E R N O O N S E S S I O N

THE CLERK: Case on trial continued. All parties are present. Jurors are not present at this time.

People ready to proceed?

MR. BIANCAVILLA: Ready.

THE CLERK: Defendant ready?

MR. CHAMBERLAIN: Defendant ready.

THE COURT: Mr. Biancavilla, who is your next witness?

MR. BIANCAVILLA: Doctor Catanese, Judge.

THE COURT: Will you bring the jury in, please?

THE CLERK: They're on their way up.

THE COURT OFFICER: Jury entering.

THE CLERK: Both sides stipulate all sworn jurors are present and seated properly?

MR. BIANCAVILLA: Yes.

THE COURT: Mr. Chamberlain?

MR. CHAMBERLAIN: I'm sorry, Yes. So stipulated.

THE COURT: Mr. Biancavilla, call your next witness, please.

MR. BIANCAVILLA: Doctor Gerard Catanese.

1 G E R A R D C A T A N E S E, Doctor, called as a witness
2 by and on behalf of the People, having been first duly
3 sworn, testified as follows:

4 THE CLERK: Be seated.

5 THE COURT OFFICER: In a loud voice, would
6 you give your full name, spelling your last name, and
7 your County of residence.

8 THE WITNESS: Sure. My name is Gerard
9 Catanese. Last name is C-A-T-A-N-E-S-E. My County of
10 residence is Nassau.

11 THE COURT OFFICER: Thank you.

12 THE COURT: You may inquire.

13 MR. BIANCAVILLA: Thank you.

14 DIRECT EXAMINATION

15 BY MR. BIANCAVILLA:

16 Q Doctor Catanese, good afternoon.

17 A Good afternoon.

18 Q Doctor, would you tell the jury where you're
19 employed?

20 A I'm employed at the Nassau County Medical
21 Examiner's Office.

22 Q And are you a physician duly licensed to practice
23 medicine within the State of New York?

24 A Yes, I am.

25 Q How long have you be licensed to practice your

1 profession?

2 A Since 1988.

3 Q And in what field do you practice?

4 A I practice in the field of forensic pathology.

5 Q Would you tell the jury what your educational
6 background is please?

7 A Sure. I have a BS in biology from St. John's
8 University in Queens. I have a Doctor of Medicine from SUNY
9 Health Science Center in Brooklyn. I have a two year
10 residency in anatomic pathology from SUNY Health Science
11 Center in Brooklyn. I have a one year internship in
12 pediatrics from Winthrop University Hospital in Mineola. I
13 have a two year residency in laboratory medicine from Kings
14 County Hospital in Brooklyn. I have one year of specialized
15 Fellowship training in forensic pathology from the New York
16 City Medical Examiner's Office.

17 Q And would you just briefly explain to the jury,
18 what does the field of pathology involve?

19 A A pathologist is a doctor who specializes in
20 making diagnoses by examining body tissues and fluids.

21 Q How does forensic pathology relate to that?

22 A Well, forensic pathology is a subspecialty of the
23 specialty of pathology. Forensic pathologist specializes in
24 examining injuries and wound patterns and drawing
25 conclusions about them. A forensic pathologist certifies

1 cause and manners of individuals deaths.

2 Q Would you explain your responsibility at the
3 Nassau County Medical Examiner's Office?

4 A As a Deputy Medical Examiner, I perform autopsies
5 and I certify the cause and manners of individuals deaths.

6 Q And would you explain what an autopsy consists
7 of?

8 A An autopsy is a complete examination of the body.
9 It starts with an examination of the external surface of the
10 body, involves opening of the body cavities, examining all
11 of the organs in their normal anatomic position. It
12 involves removing each organ and examining it individually.

13 Q In your professional career, how many autopsies
14 have you completed yourself or been present for?

15 A With my own two hands I have performed more than
16 two thousand autopsies. And I have witnessed several
17 thousand others.

18 Q Have you on prior occasions testified in courts
19 of law as to an expert in the field of forensic pathology?

20 A Yes, I have.

21 Q In that testimony have you rendered opinions as
22 to the cause of death?

23 A Yes, I have.

24 Q Approximately how many times?

25 A More than fifty times.

1 Q Now, did there come a time, Doctor, on April 14th
2 of 2000 that you performed an autopsy on the remains of Miss
3 Williams?

4 A Yes, I did.

5 Q Were photographs taken of that autopsy?

6 A Yes, they were.

7 Q Now. Could you tell the jury what Miss Williams
8 height was?

9 A The body measured five foot eight inches.

10 Q And what was Miss Williams weight?

11 A One hundred sixty-five pounds.

12 Q And what injuries were noted to Miss Williams
13 during the external examination of the body?

14 A During the external examination of the body I
15 noticed that there was a ligature or an electric wire tied
16 around her neck. This was tied tightly. In addition to the
17 wire being tied around her neck, there was a noticeable
18 bruise to her tongue and there were hemorrhages in her eyes
19 an eyelids.

20 Q Now, did you perform an internal examination of
21 that particular area?

22 A Yes, I did.

23 Q Please describe that for the jury.

24 A Certainly. On internal examination I found
25 bruising to -- actually, on external examination there also

1 was an abrasion to her right neck that I failed to mention.

2 On internal examination there was a bruise to the
3 muscles of the deep neck. Then there was fractures of the
4 bones of the neck. By bones I mean, the hyoid bone which is
5 a small bone which sits up above the thyroid cartilage, high
6 up in the neck. There were fractures of the thyroid
7 cartilage, which is what makes up the larynx, the Adam's
8 Apple. There is also bruising to these areas of fracture.
9 There is bruising present behind the larynx. So, behind the
10 area. Okay. And let's see, there were some bruises to her
11 scalp that were deep, to the front of her left head, to the
12 side of her left head.

13 Q Thank you. Doctor, I'm going to ask that you
14 review please what have been marked as People's Exhibits 45
15 through 64 for identification. Please keep them in the same
16 order.

17 Doctor, do those photographs fairly and
18 accurately depicted the victim and the extent of the
19 victim's injuries at the time you performed the autopsy?

20 A Yes, they do.

21 Q Doctor, I'm going to ask that the witness be
22 shown People's 43 for identification.

23 Doctor, do you recognize that?

24 A Yes, I do.

25 Q What do you recognize that to be?

1 A This is the ligature that I removed from the
2 deceased at the time of autopsy.

3 MR. BIANCAVILLA: Judge, at this time we
4 would offer People's 43 through 64 into evidence.

5 THE COURT: Please show them to
6 Mr. Chamberlain.

7 (Whereupon, there is a brief pause in the
8 proceedings)

9 MR. CHAMBERLAIN: May we approach, your
10 Honor?

11 THE COURT: Yes.

12 (Whereupon, the following takes place at the
13 Bench, between the Court and Counsel:)

14 THE COURT: Yes, Mr. Chamberlain?

15 MR. CHAMBERLAIN: Judge, I have an objection
16 to a substantial number of these. I would not object
17 to any that showed the victim's hand. I believe there
18 was some scrapes and fingernails, that may be relevant.
19 I have no idea what the relevance of this photograph
20 is.

21 THE COURT: May I see that?

22 MR. CHAMBERLAIN: Or this one. Or this one.

23 THE COURT: Mr. Biancavilla, could you tell
24 us the relevance?

25 MR. BIANCAVILLA: Sure. If you give me those

1 three I will explain to you what the relevance is.

2 With respect to photographs number --
3 People's 62 for identification, People's 61 for
4 identification, people's 60 for identification. Doctor
5 Catanese is going to testify to what these photograph
6 demonstrate, that the victim did not die from the
7 ligature strangulation; the victim died from a manual
8 strangulation. In fact, her throat was compressed and
9 broken with a hand before the ligature was applied.
10 That is what these photographs show, the broken
11 cartilage and the injury to the internal portions.

12 THE COURT: Are these the cartilage in the
13 neck?

14 MR. BIANCAVILLA: Within the throat itself.
15 These are portions of the throat itself. And these are
16 the throat reflected, that shows the injuries to that
17 throat from manual strangulation.

18 This, again, shows that the victim's tongue
19 was bitten. And that is consistent with a manual
20 strangulation because when you strangle someone, you
21 push their tongue and their tongue protrudes and they
22 bite down on it.

23 THE COURT: That is what the doctor will
24 testify?

25 MR. BIANCAVILLA: Absolutely. That is what

1 is significant about that.

2 THE COURT: Yes, Mr. Chamberlain.

3 MR. CHAMBERLAIN: My recollection of both the
4 autopsy record and the doctor's testimony before the
5 grand jury did not indicate that at all. So, this is
6 something completely knew. The autopsy report
7 indicates the strangulation. It doesn't indicate it
8 was caused by one or the other. And the testimony in
9 the grand jury would so indicate also.

10 MR. BIANCAVILLA: You can cross-examine him
11 on whatever you want, John.

12 MR. CHAMBERLAIN: I can cross-examine after
13 those things are in.

14 MR. BIANCAVILLA: Right.

15 MR. CHAMBERLAIN: They're unnecessary to this
16 case. It's not --

17 MR. BIANCAVILLA: Judge, they clearly
18 demonstrate the cause and manner of death, which is
19 extremely important for this particular case. That she
20 was a manual strangulation before the ligature was
21 applied.

22 MR. CHAMBERLAIN: That's not the report that
23 we have, Judge.

24 THE COURT: With respect to the photographs
25 themselves -- I'm going to be reading to you from

1 Richardson -- principles -- excuse me, withdrawn.

2 But there is seemingly liberality in the
3 admission of inflammatory real evidence, especially
4 photographs, at criminal trials. Photographs are
5 admissible, if relevant, to illustrate and corroborate
6 or disprove other evidence. Graphic evidence should be
7 excluded only if its sole purpose is to arouse the
8 emotions of the jury and to prejudice the defendant.

9 In this case, according to the offer of proof
10 that will be testified to by the Doctor, is given to us
11 by the assistant district attorney. They are going to
12 prove the manner of death in this particular case. And
13 they are not solely here for the purpose of just being
14 inflammatory.

15 For that reason, I will admit it into
16 evidence.

17 You have an exception.

18 MR. CHAMBERLAIN: Judge, before you rule
19 finally, let me say, if I may --

20 THE COURT: Yes.

21 MR. CHAMBERLAIN: That I would like to be
22 heard. If that is the causality, I would like to bring
23 the autopsy report up in the grand jury. Because this
24 is the first time there's been any notice of any
25 scientific evidence that there is death by manual

1 strangulation. That was not his testimony, as far as I
2 recall it. And I would request, either let me do that
3 now or let these pictures be held.

4 MR. BIANCAVILLA: No. He has to use them,
5 Judge.

6 MR. CHAMBERLAIN: And I think probably it
7 would be best to let me do it now. Let me --

8 THE COURT: I'll let you show me the autopsy
9 report.

10 MR. BIANCAVILLA: Judge, can I just, for a
11 moment, before we break here, what's the significance
12 of that?

13 THE COURT: I don't know.

14 MR. BIANCAVILLA: My point is, if in the
15 autopsy report it says strangulation, he can
16 cross-examine him on that.

17 THE COURT: Let me see what it says.

18 MR. BIANCAVILLA: It makes no difference. It
19 doesn't affect the admissibility of these photographs.

20 MR. CHAMBERLAIN: Obviously it makes a
21 difference --

22 MR. BIANCAVILLA: John, let's -- John, let me
23 have those.

24 MR. CHAMBERLAIN: I have it.

25 (Whereupon, there is a brief pause in the

1 proceedings.)

2 MR. BIANCAVILLA: Is there a specific part
3 there you want to direct him to, John?

4 MR. CHAMBERLAIN: Well, as soon as I have a
5 chance to read it myself.

6 MR. CHAMBERLAIN: Here's the toxilological
7 report.

8 THE COURT: I now have had an opportunity to
9 review the certificate of death and report of autopsy.
10 Now, the cause under immediate cause is strangulation.
11 It isn't limited to by ligature or manual. And as we
12 look at the conclusion in the report of autopsy, cause
13 of death is strangulation. Again, it's not limited to
14 any particular type.

15 So, based on what is being shown to me, it
16 seems not to be the same as what you just told me
17 previously on the record that you were going to show
18 me.

19 MR. CHAMBERLAIN: Judge, let me -- give me a
20 second here, if I may.

21 Unless Mr. Biancavilla can point out some
22 section that I'm missing --

23 THE COURT: Let me tell you this,
24 Mr. Chamberlain. No matter what the grand jury
25 testimony says, if it says something different than

1 strangulation, you certainly can use that with respect
2 to cross-examination. Because that may show an
3 inconsistency.

4 MR. CHAMBERLAIN: I understand that, Judge.

5 THE COURT: However, as I said before, the
6 autopsy report, as well as the certificate of death,
7 say strangulation.

8 MR. CHAMBERLAIN: So does the grand jury
9 strangulation. There's no indication that it was
10 manual. As a matter of fact, there was testimony as to
11 both forms of strangulation. There's no indication,
12 previous to this point, previous to the statement that
13 they're going to limit it to one form, that she died as
14 a result of one, rather than the other.

15 THE COURT: You certainly have an opportunity
16 to cross-examine the Doctor.

17 MR. BIANCAVILLA: As a matter of fact, he may
18 have never even been asked the question.

19 With respect to this photograph. If you want
20 me to continue, I will explain the significance of
21 that.

22 THE COURT: Are there any others you object
23 to?

24 MR. CHAMBERLAIN: Yes, Judge.

25 THE COURT: Finish them now.

1 MR. CHAMBERLAIN: I don't think this is -- I
2 think it's gory. I will have no objection to any
3 photographs of the neck.

4 MR. BIANCAVILLA: Can I address this one,
5 Judge?

6 THE COURT: Yes.

7 MR. BIANCAVILLA:

8 MR. CHAMBERLAIN: Let me finish with respect
9 to my position.

10 MR. BIANCAVILLA: There are different ones.

11 THE COURT: He wants to keep them in order.

12 MR. CHAMBERLAIN: I will keep them in order,
13 Judge.

14 I will refer to the fact that there are
15 numerous photographs of the injuries that have been
16 testified to. Injuries to the neck and side of the
17 head. That's what he testified to. But the report
18 says, and what the grand jury testimony is, I have no
19 objection to that. Other photographs tend to inflamme.

20 THE COURT: Which ones?

21 MR. CHAMBERLAIN: The ones you're handling
22 for one.

23 THE COURT: People's 58 for identification.

24 MR. BIANCAVILLA: Can I address that?

25 THE COURT: Yes.

1 MR. BIANCAVILLA: Part of manual
2 strangulation is, a major way to determine whether an
3 individual has been strangled manually, okay, is what
4 is called hemorrhaging and petechial hemorrhaging in
5 the eyes, which is why the doctor basically pulls the
6 eyelids up. What the doctor is going to testify is,
7 with regarding all this hemorrhaging in the eyes, was
8 caused by --

9 THE COURT: The doctor will say it would be a
10 direct result of manual strangulation.

11 MR. BIANCAVILLA: Absolutely.

12 THE COURT: Based on that offer of proof,
13 Mr. Chamberlain?

14 MR. CHAMBERLAIN: Then I will amend my
15 request here, Judge.

16 THE COURT: Yes.

17 MR. CHAMBERLAIN: And request that this
18 testimony regarding one form of strangulation versus
19 another be precluded. Because I have no prior notice
20 that this was a manual strangulation, as distinguished
21 from --

22 THE COURT: Why are you requiring notice of a
23 particular type of strangulation?

24 MR. CHAMBERLAIN: We're requiring notice of
25 scientific tests and evidence they we, had were given

1 some, and there was no evidence it was one form or the
2 other.

3 MR. BIANCAVILLA: He was given the entire
4 autopsy report and he was given an opportunity to view
5 all the autopsy photographs.

6 MR. CHAMBERLAIN: Maybe you can point out
7 something in the autopsy report or the grand jury
8 testimony that says it was manual rather than --

9 MR. BIANCAVILLA: If he wasn't asked to.

10 MR. CHAMBERLAIN: Can I finish a sentence?

11 THE COURT: Let Mr. Chamberlain finish.

12 MR. BIANCAVILLA: All right. Go ahead.

13 THE COURT: Go ahead, Mr. Chamberlain.

14 MR. CHAMBERLAIN: Maybe he can point out a
15 place in the autopsy report, the grand jury testimony,
16 anything, where it was given before this minute that
17 indicates it was manual rather than the elements that
18 he testified to before, which was both.

19 THE COURT: Mr. Biancavilla, do you want to
20 reply?

21 MR. BIANCAVILLA: Judge, no. There's no
22 point to reply. He was provided with the autopsy
23 report. The autopsy report is very clear. And he
24 was -- he could have had his expert examine the autopsy
25 report. He could have examined all the photographs.

1 He chose not to. At this point it's not my problem he
2 didn't do his homework.

3 THE COURT: Apparently, the People have
4 complied with Criminal Procedure Law 240.20 with
5 respect to discovery.

6 You know, as far as I'm concerned,
7 Mr. Chamberlain, I'm going to admit those photographs.
8 You have an exception.

9 MR. CHAMBERLAIN: Respectfully except to
10 those.

11 THE COURT: Yes, you have an exception.

12 MR. CHAMBERLAIN: Thank you.

13 MR. CHAMBERLAIN: I also move for preclusion
14 and you're denying that?

15 THE COURT: Yes.

16 MR. CHAMBERLAIN: And I except that.

17 MR. BIANCAVILLA: Judge, you have to give me
18 a minute. They're all out of order now.

19 Okay, Judge.

20 (Whereupon, the following takes place in open
21 court:)

22 MR. BIANCAVILLA: Judge, I'm going to ask
23 that Doctor Catanese be permitted to step out of the
24 box and could we have the lights turned out in the
25 courtroom?

1 We offer People's 45 through 64, and in
2 addition People's 43.

3 THE COURT: May I have the photo for a
4 moment, please.

5 MR. BIANCAVILLA: Yes.

6 THE COURT: Mr. Chamberlain, do you have any
7 objection to the admission of People's 45 through 57
8 and 63 and 64? When you come forward -- take a look.

9 MR. CHAMBERLAIN: Thank you, Judge.

10 (Whereupon, there is a brief pause in the
11 proceedings.)

12 MR. CHAMBERLAIN: I have no objection to
13 those. No objection to these.

14 THE COURT: Okay.

15 MR. CHAMBERLAIN: No, I do have, as we
16 discussed, Judge.

17 THE COURT: They're separate.

18 Mr. Biancavilla, can you come forward,
19 please?

20 (Whereupon, the following takes place at the
21 Bench, between the Court and Counsel:)

22 THE COURT: Mr. Chamberlain, I thought those
23 were the only ones you were objecting to.

24 MR. CHAMBERLAIN: No, Judge. I said I
25 objected to -- I had no objection to the ones --

1 THE COURT: Perhaps you should specifically
2 tell me what you object to.

3 MR. CHAMBERLAIN: I'm looking through them,
4 Judge.

5 MR. CHAMBERLAIN: I object to number 45. I
6 did not object to any of the -- I do not object to 53,
7 54, 55, 56, and 57, which show the ligature around the
8 deceased's neck.

9 I object to 58, 59, 60, 61, 62. Based on no
10 prior notice of the claim with respect to what they are
11 intended to show at this time. And, alternatively, I
12 move for preclusion from any testimony with respect to
13 them.

14 THE COURT: Anything additional you want to
15 say, Mr. Biancavilla?

16 MR. BIANCAVILLA: Judge, they reflect the
17 victim as she was autopsied and accurately reflect all
18 her injuries.

19 THE COURT: And Mr. Chamberlain had an
20 opportunity to see all those photographs in discovery?

21 MR. BIANCAVILLA: Absolutely.

22 THE COURT: Your objection is overruled,
23 Mr. Chamberlain.

24 Mark them in evidence.

25 (Whereupon, the referred to exhibits,

1 previously marked for identification are received and
2 marked People's Exhibits 45, 46, 47, 48, 49, 50, 51,
3 52, 53, 54, 55, 56, 57, 58, 59, 50, 61, 62, 63, in
4 evidence by the reporter as instructed.)

5 (Whereupon, the following takes place in open
6 court:)

7 THE COURT: People's 45 through 64 are to be
8 marked in evidence.

9 THE COURT: Additionally, People's 43 is to
10 be marked into evidence. Any objection to that,
11 Mr. Chamberlain?

12 MR. CHAMBERLAIN: I have no objection to
13 that, Judge.

14 THE COURT: Okay. Mark it in evidence.

15 (Whereupon, the referred to item is received
16 and marked People's Exhibit 43 in evidence by the
17 reporter as instructed.)

18 THE COURT: Doctor, would you step into the
19 well, please.

20 THE WITNESS: Sure.

21 (Whereupon, Doctor Catanese leaves the
22 witness stand.)

23 MR. BIANCAVILLA: Judge, may we put the
24 lights down?

25 Displaying People's exhibit 45.

1 Q Doctor, could you please explain what the jury is
2 viewing in People's Exhibit 45?

3 A This is a photograph of the deceased prior to
4 performing the autopsy.

5 THE JUROR: He's blocking some of the jurors.

6 THE COURT: Is that better?

7 THE JUROR: Yes.

8 A This is a photograph of the deceased as received
9 prior to performing the autopsy. You can see that there's a
10 wire tied around her neck.

11 Q Displaying Exhibit 46.

12 A This is another photograph, again, prior to
13 performing the autopsy. It just shows the different view of
14 the ligature which is tied tightly around the deceased's
15 neck.

16 Q Is there something intertwined with that
17 ligature, Doctor?

18 A Hair is intertwined with the ligature there. The
19 deceased was wearing a metal-like change which is hanging on
20 the ligature as well.

21 Q Displaying Exhibit number 47.

22 A Here we have a closer view of the ligature around
23 the deceased's neck. Noting the knot in the corner here,
24 the hair interwound with the ligature. And here
25 demonstrating it is wrapped multiple times -- three times in

1 actuality -- and tied tightly.

2 Q Displaying Exhibit number 48.

3 A This is a view, again, prior to performing the
4 autopsy. This is a view of the other side of the neck
5 essentially. It's showing the ligature.

6 Q Exhibit number 49.

7 A Here we have a closer view of the ligature tied
8 tightly around the deceased's neck.

9 Q Exhibit number 50. If you can, explain to the
10 jury, Doctor, how you removed the ligature from the neck.

11 A Sure. This actually is the ligature that was
12 present on the deceased's neck. In order to remove the
13 ligature, I went to an area where there were no knots, where
14 it wasn't wrapped around itself. I cut those areas and I
15 tied them together with white string in order to preserve
16 them. Then I removed the ligature. Some of the hair was
17 trapped in the ligature, and I layed it out for
18 photographic.

19 Q Displaying Exhibit number 51.

20 A Here, again, the same ligature. We're getting a
21 closer view of the knot.

22 Q Exhibit number 52.

23 A Here, again, same ligature. Part of the ligature
24 was looped and that shows the loop. There would be the
25 knot.

1 Q Displaying Exhibit number 53.

2 A This is a photograph of the deceased's neck after
3 the ligature has been removed. If you look, there is marks
4 on the neck. These horizontal type marks, these are called
5 ligature abrasion furrows. There are marks on the skin of
6 the neck where the ligature was tied.

7 Q Displaying Grand jury Exhibit number 54 --
8 People's Exhibit 54, sorry.

9 A This is just a view of the other side of the
10 neck, showing the marks on the neck from the ligature.

11 Q People's 55.

12 A This is showing the back of the neck with the
13 ligature marks.

14 Q People's 56?

15 A This is a view of the front of the neck with the
16 chin being pulled upward. We see the ligature marks. We
17 also see an abrasion to the area of the neck here.

18 An abrasion is a type of frictional injury where
19 the surface epithelia or outer layer skin is actually rubbed
20 off.

21 This injury here would not be consistent with a
22 ligature strangulation, but would be consistent with manual
23 strangulation.

24 Q Manual strangulation, what would cause that
25 injury?

1 A The actual fingers rubbing against the neck.

2 Q Displaying Exhibit number 57.

3 A This is another view of the neck, with the chin
4 being pulled up. It shows the abrasion that I just
5 described. Then it shows the ligature abrasion furrows.

6 Q Now, Doctor, in determining whether a person has
7 been strangled or has died as a result of strangulation, is
8 there a particular point in time when you were to examine
9 the eyes of the individual?

10 A Sure. One would examine the eyes early on in the
11 examination and one would be looking for hemorrhages in the
12 eyes and eyelids.

13 Q What is the point of that?

14 A When someone is manually strangled, there's a
15 compression of the neck and compression of the circulation.
16 But it's usually an incomplete compression of the
17 circulation. So, there's a back-up of blood. And the blood
18 vessels in the eyes and eyelids being very weak, they tend
19 to bleed from this.

20 Where, if someone were just strangled with a
21 ligature tied tightly around their neck, there should be a
22 complete cut off of circulation. There should be no back-up
23 of blood. There should be no hemorrhages in the eyes and
24 eyelids.

25 The fact there there is hemorrhages in the eyes

1 and eyelids says there's more than a ligature tied around
2 the person's neck. That there was a manual component to the
3 strangulation.

4 Q I'm going to display for the jury People's 58.
5 Please describe for the jury what they're viewing?

6 A We're looking at a photograph of the deceased's
7 face. The eyelids are being held up. And we see the
8 hemorrhage in the eyes and eyelids. This hemorrhage is
9 caused by the strangulation.

10 Q When you say "the strangulation," is that
11 hemorrhage caused by a manual strangulation or caused by a
12 ligature strangulation?

13 A Manual strangulation.

14 Q Now, Doctor, could you describe for the jury what
15 occurs to the anatomy or the mouth and tongue of an
16 individual as a result of a manual strangulation?

17 A In a manual strangulation, where there's a
18 pushing up of the larynx, the tongue would protrude, so
19 that's something that one would expect. So, an injury of a
20 protruding tongue would be a fairly common finding.

21 Q What is an injury of a protruding tongue?

22 A Its tongue would be -- when one pushes up on the
23 larynx, the tongue can be pushed out of the mouth and then
24 because of the teeth and the pushing of the neck, the tongue
25 could then be injured.

1 Q I will display for the jury People's Exhibit
2 number 59.

3 Please explain to them what they're observing?

4 A This photograph, I'm holding the deceased's mouth
5 open and we see there is an injury to the tongue. We see
6 the tongue is partially protruding from the mouth. I didn't
7 put the tongue in that position, that's the position that it
8 was received.

9 Q And that is consistent with a manual
10 strangulation?

11 A Yes.

12 Q Now, Doctor, could you describe for the jury the
13 injuries to the throat or the neck during the manual
14 strangulation?

15 A Sure. When examining any strangulation, when one
16 dissects the neck, one dissects the neck layer by layer,
17 looking for evidence of injury.

18 In a manual strangulation versus a ligature
19 strangulation, one would expect to see focal type of
20 injuries, bruises or contusion. What I mean by bruises or
21 contusions is, blunt trauma, squeezing that disrupts blood
22 vessels and causes hemorrhage. One would expect to see some
23 contusions of the musculature of the neck. Also, the neck
24 bones.

25 In a manual strangulation, because of the

1 squeezing, one would expect there to be fractures of the
2 neck bones, which we had in this case. We have fractures of
3 the thyroid cartilage and the hyoid bone. The bone that
4 sits up in the neck.

5 So, in a ligature strangulation, with a simple
6 wire ligature, you wouldn't find fractures that require
7 squeezing.

8 What is very, very important as well is --

9 Q Let me display People's Exhibit 60 and explain to
10 the jury, in the context of what you were just saying, what
11 you they are viewing.

12 A What we are viewing here is the skin of the neck
13 dissected up and the layers -- the muscular layers of the
14 neck stripped off and dissected individually.

15 And what we see here is a contusion or abrasion
16 of one of the neck muscles on the left side of the neck.

17 THE COURT: Doctor, could you move back?

18 Q Thank you, Doctor. Go ahead, Doctor.

19 A So, in this area, here is the bruise, that was in
20 the muscle of the neck.

21 Q Doctor, so the people there can see what you're
22 talking about, this area up here would be the bruising?

23 A Yes. That's a neck muscle and that is reflected
24 back and it's dissected.

25 Q That's also consistent with a manual type of

1 strangulation?

2 A Yes. Squeezing.

3 Q Okay. Displaying number 61 in evidence. Please
4 explain to the jury what they're viewing there.

5 A This is a photograph of the hyoid bone. The
6 hyoid bone is a bone that sits up in the neck. On the hyoid
7 bone, we see that this part of it is fractured or broken.
8 And that there is hemorrhage or contusion in the site of
9 fracture. This shows that this bone was broken by squeezing
10 the neck while the individual was alive, consistent with
11 manual strangulation.

12 Q Displaying People's Exhibit 62.

13 A This is a photograph of the larynx, the Adam's
14 Apple, if you must. We're looking at the back of the larynx
15 here, we were not looking at the front. We're looking at
16 the part that rides against the neck. The bony part of the
17 neck in the back. We see a fracture of the this part of the
18 larynx here with hemorrhage into it. Again, consistent with
19 the manual strangulation. Consistent with squeezing. The
20 hemorrhage indicating it happened while the deceased was
21 alive.

22 We also see a bruise here in the back of the
23 larynx or a contusion. In order to reach the back of the
24 larynx, one would have to actually squeeze into the neck to
25 do it. You can't reach in by pushing on the outer surface.

1 This is consistent with a manual strangulation.

2 Q Now, Doctor, did you also examine the hands of
3 the individual?

4 A Yes, I did.

5 Q Please explain to the jury your examination of
6 the hands and what you did?

7 A Certainly. I examined the hands prior to
8 performing the autopsy. Then I took a clipping of the
9 fingernails, which would be routine.

10 Q Were there any injuries to the fingernails or to
11 the fingers?

12 A No. No injuries to the hand or fingernails.

13 Q We will display People's Exhibit number 63.
14 Explain to the jury what they're viewing.

15 A This is a photograph of the back of the
16 deceased's hand.

17 Q That would be the right hand?

18 A Yes.

19 Q And photograph number 64?

20 A Photograph of the back of the back of the left
21 hand, showing no injuries.

22 Q Okay. Thank you, Doctor.

23 MR. BIANCAVILLA: You can be seated again.

24 (Whereupon, Doctor Catanese resumes his seat
25 on the witness stand.)

1 Q Now, Doctor, as part of the autopsy that you
2 performed, were tissue samples from the deceased submitted
3 for analysis to the toxicology department?

4 A Yes, they were.

5 Q Were tissue samples also examined
6 microscopically?

7 A Yes, they were.

8 Q Did either the toxicological or microscopic
9 examinations yield anything of significance?

10 A The deceased's blood alcohol was 0.26 percent.

11 Q Now, with respect to the cause of death, was
12 there anything significant about the toxicology or the
13 microscopic examination?

14 A No.

15 Q Now, have you an opinion within a reasonable
16 degree of medical certainty as to the cause of death?

17 A Yes, I do.

18 Q And could you tell us what your opinion is?

19 A Strangulation is the cause of death.

20 Q What do you base that opinion on, Doctor?

21 A I base my opinion on my autopsy examination.

22 Q Now, with respect to strangulation, you removed
23 the ligature from the deceased's neck?

24 A That is correct.

25 Q Could you tell the jury whether or not the

1 strangulation or the death occurred from a manual
2 strangulation or from the ligature itself?

3 A My opinion was that both contributed. I couldn't
4 separate them.

5 Q But, is it your opinion that she was manually
6 strangled before the ligature was placed around her neck?

7 A It could have happened at the same time. It's
8 hard to know. But both of them did occur.

9 Q Now, do you have an opinion point within a
10 reasonable degree of medical certainty as to whether Miss
11 Williams could have survived these injuries had she received
12 prompt medical attention?

13 A No, she wouldn't have been able to survive them.

14 Q Thank you very much, Doctor.

15 MR. BIANCAVILLA: I have nothing further for
16 this witness.

17 THE COURT: Mr. Chamberlain.

18 CROSS-EXAMINATION.

19 BY MR. CHAMBERLAIN:

20 Q Doctor, you indicated that there was a manual
21 strangulation and a ligature, is that correct?

22 A Yes.

23 Q So, your testimony is not that the cause of death
24 was manual strangulation by itself, is that correct?

25 A My opinion is, the cause of death is

1 strangulation, which includes both.

2 Q Including both?

3 A Yes.

4 Q As you sit here, Doctor, there's no way you can
5 tell whether the injuries that caused death were caused by
6 just manual strangulation?

7 A They were caused by both, in my opinion.

8 Q Right. Okay. Doctor, you said there were
9 bruises to the side of the face of the victim?

10 A They were deep. There was a deep bruising to the
11 muscle --

12 Q You're misreading my question. I said, to the
13 side of the face. You're pointing to your neck.

14 A There were deep hemorrhages to the scalp of the
15 victim.

16 Q And you reported those in your autopsy report as
17 blunt impact --

18 A Yes.

19 Q Injuries?

20 THE WITNESS: I will open the report to
21 refresh my memory.

22 THE COURT: Yes. Refresh your recollection.

23 A Yes.

24 Q And, just, again, that report, by the way, did
25 not indicate that the strangulation is caused by either type

1 of -- either the manual or the ligature, just that it was
2 strangulation, is that correct?

3 A As to the cause of death, yes.

4 Q Were these blunt impacts to the side of the head
5 in at least -- withdrawn.

6 Does your report indicate it was at in at least
7 two locations?

8 A Yes.

9 Q Were they --

10 MR. CHAMBERLAIN: Can I see the exhibits that
11 were just introduced into evidence?

12 THE COURT: Yes, of course.

13 Q Were they to the right side of the victim's head,
14 Doctor?

15 A The left side.

16 Q The left side?

17 A Yes.

18 Q I'm going to show you -- I'm going to show you
19 three exhibits here which show the side of the head, and ask
20 you if the blunt impact injuries are shown on the exhibit,
21 photograph, Doctor.

22 MR. CHAMBERLAIN: They are, for the record,
23 People's 45, 46 and 48.

24 A The injuries are described in my report as
25 sub-scalp contusions. So, they're not actually readily

1 evident looking at the photographs. They're only after the
2 scalp is peeled back and dissected and examined.

3 Q So, they're not readily available in that -- in
4 those photographs?

5 A They're described as sub-scalp contusions.
6 They're below the surface of the scalp.

7 Q Did you take any other photographs of the side of
8 the head showing those injuries that you recall?

9 A Yes. There are photographs of them.

10 Q Do you recall which ones they are?

11 A There should be a photograph of the scalp peeled
12 back and the two contusions or bruises that I described.

13 MR. CHAMBERLAIN: Do I have --

14 MR. BIANCAVILLA: Here, Mr. Chamberlain.

15 THE COURT: Counsel, no conversation, please.

16 Q Are there any photographs without the scalp
17 peeled back that show the contusions that you're referring
18 to?

19 A These are sub-scalp contusions. So, you wouldn't
20 see them unless you pulled the scalp back.

21 Q Do you have a -- do you have an opinion --

22 MR. CHAMBERLAIN: I'm not going to offer
23 those. Withdrawn.

24 Q The photographs that show the scalp peeled back
25 would be nothing a layman could identify as an injury, is

1 that correct?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Actually, I'll let the Doctor
4 answer it if he can.

5 A I don't know what a layman would be able to
6 identify.

7 Q Are there any photographs, other than that,
8 showing the contusions to the side of the scalp without the
9 scalp peeled back?

10 A No. They're not visible without the scalp being
11 peeled back, you see.

12 Q Okay. In any event, Doctor, these injuries to
13 the side of the head, the injuries we're talking about to
14 the side of the head, these blunt impact injuries, would not
15 have been caused by the manual strangulation, is that
16 correct?

17 A They would be caused by a blunt impact. So, not
18 from squeezing the throat, no.

19 Q Not by the ligature either?

20 A Not by the ligature in the throat, no.

21 Q And there were at least two of those?

22 A There were two injuries identified, yes.

23 Q As you sit here, Doctor, do you have a
24 reasonable -- an opinion with a reasonable degree of medical
25 certainty as to what might have caused those blunt impact

1 injuries to the side of the head?

2 A These injuries are contusions or bruises. A
3 bruise or contusion is a type of blunt injury produced by
4 disrupted blood vessels under the skin. Any type of impact
5 with a non-sharp instrument could have caused them. It's
6 impossible to say what.

7 Q If the victim were shoved down on her back to be
8 strangled, that act would not cause injury to the side?

9 A Unless she banged the side of her head.

10 Q But if she banged it, would that cause multiple
11 injuries here?

12 A She had two of them. She had one to the frontal
13 area and one to the side. So, you're probably talking about
14 two impacts. Because they're kind of separated. But,
15 exactly, how they happened, I couldn't tell you.

16 Q No. I understand that. You mentioned the
17 toxicological report, you didn't do that?

18 A I just gathered the specimens. No.

19 Q The analysis is was done by a separate expert
20 who -- an expert in toxicology?

21 A The analysis was done by a toxicologist, yes.

22 Q And he's the gentleman waiting outside?

23 MR. BIANCAVILLA: Objection.

24 THE COURT: Sustained.

25 Q You indicated that the toxicological report did

1 not indicate any evidence that would be relevant to this
2 case, is that correct?

3 MR. BIANCAVILLA: Objection, that's not what
4 he said.

5 THE COURT: Sustained as to relevancy.

6 Q The toxicologist outside would be the proper
7 person to ask about the analysis of the toxicological
8 report, is that correct?

9 MR. BIANCAVILLA: Objection.

10 THE COURT: Sustained as to form.

11 Q You did sign that report yourself?

12 A I signed the report, which I'll pull now to show
13 that I reviewed it, yes.

14 Q But you're not a toxicologist?

15 A I'm not a toxicologist, no.

16 Q I have no further questions. Thank you.

17 THE COURT: Any redirect?

18 MR. BIANCAVILLA: Yes.

19 I'm going to ask that these be marked as
20 People's 65 and 66 for identification.

21 THE COURT: Yes.

22 (Whereupon, the referred to items are
23 received and marked People's Exhibit 65 and 66 for
24 identification by the reporter as instructed.)

25 THE COURT OFFICER: 65 and 66 marked for

1 identification.

2 MR. BIANCAVILLA: Can we show them to the
3 witness, please.

4 THE COURT: Yes.

5 REDIRECT EXAMINATION

6 BY MR. BIANCAVILLA:

7 Q Doctor Catanese, do you recognize those two
8 photographs?

9 A Yes, I do.

10 Q Do they fairly and accurately reflect the reflected
11 scalp of the victim in this particular case?

12 A Yes, they do.

13 Q And do they fairly and accurately represent the
14 two injuries that you were just discussing with
15 Mr. Chamberlain?

16 A Yes, they do.

17 MR. BIANCAVILLA: Judge, I offer those into
18 evidence.

19 THE COURT: Show them to Mr. Chamberlain.

20 MR. CHAMBERLAIN: I would have the same
21 objection that I had before. I think they're unduly
22 gory.

23 Other than that, I have no objection.

24 I don't think they're probative either.

25 THE COURT: Overruled.

1 Mark them in evidence.

2 MR. BIANCAVILLA: Judge, could we display
3 them for the jury and could I have Doctor Catanese back
4 down here, please.

5 THE COURT: Yes.

6 (Whereupon, the referred to items previously
7 marked for identification are received and marked
8 People's Exhibit 65 and 66 in evidence by the reporter
9 as instructed)

10 (Whereupon, Doctor Catanese leaves the
11 witness stand.)

12 Q Doctor Catanese, I'm going to display for the
13 jury People's exhibit 65. If you could just explain to them
14 what they're viewing, as it relates to the two blunt force
15 injuries we you were discussing.

16 A We're looking at a photograph of the top of the
17 deceased's head. The scalp has been cut. Half of the scalp
18 has been pulled forward. The other half has been peeled
19 back. The left side of the head, front area, there is a
20 contusion, a sub-scalp contusion or bruise.

21 By sub-scalp I mean, one below the scalp. A
22 contusion or a bruise, as I said earlier, is a type of blunt
23 trauma that disrupts blood vessels and causes hemorrhage.

24 We have one here present on the frontal area. We
25 have one here present on the side of the head, the temporal

1 area. We have two injury sites itself.

2 Q So it's clear for the jury, would they be visible
3 from outside of the body?

4 A These were not visible.

5 Q Why not, Doctor?

6 A She probably died after receiving them. Had she
7 lived longer, they might have been visible. I described
8 them as sub-scalp contusions because I couldn't see them on
9 the surface, only after I reflected the scalp back.

10 Q I'm going to display Exhibit 66. What is that?

11 A This is a view of the deceased from the left side
12 of the head, body being in that direction. The same view,
13 except it's to the side. The scalp peeled forward. The
14 scalp peeled back. One injury, two injuries. We see the
15 two injuries to the head, but we see them from the left
16 side.

17 Q Now, Doctor, please explain for the jury what
18 causes blunt force trauma.

19 A Blunt force trauma is -- are injuries produced by
20 impacts with non-sharp instruments. So, what could cause
21 this, anything that isn't sharp impacting the head; a fist,
22 a floor, anything.

23 Q Anything that she would bang her head against?

24 A Exactly.

25 Q Let me show you a picture, Doctor, People's

1 Exhibit number 22.

2 I'm going to ask you, hypothetically speaking,
3 there's a picture of where the victim was found. Okay.
4 Now, hypothetically speaking, if this is a metal bed frame
5 and while the victim is being strangled and pushed on the
6 ground and her head is banged up on the left side aside that
7 metal bed frame, would that cause blunt force trauma injury?

8 A All you need is an impact with something that
9 isn't sharp. So, yeah, sure, that could cause it.

10 Q Thank you, Doctor. I have nothing further.

11 THE COURT: Anything further,
12 Mr. Chamberlain?

13 MR. CHAMBERLAIN: Yes, Judge.

14 (Whereupon, Doctor Catanese resumes his seat
15 on the witness stand.)

16 RECROSS-EXAMINATION

17 BY MR. CHAMBERLAIN:

18 Q Doctor, you testified that the blunt force
19 injuries were probably caused before the victim died.
20 There's no question they were caused before the victim died,
21 right? There's no evidence they were caused after the
22 victim died?

23 A They would have to be caused before she died. We
24 would have had a blood pressure or heart rate at the time.
25 I don't remember saying probably.

1 Q Doctor, you responded in response to a
2 hypothetical question. She could have -- she hit her head,
3 that could be responsible, is that right?

4 A All we need is an impact with a blunt surface.

5 Q Right. That would have been one hit, right, if
6 she had hit her head, in that hypothetical as she was going
7 down?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: That's speculative,
10 Mr. Chamberlain. Sustained.

11 Q Well, hypothetically, if you had a victim being
12 pushed down or shoved down to be strangled, that is left in
13 the condition that this photograph shows, she hits her head,
14 that would be one impact, is that correct?

15 A My understanding was, metal rail on the bed. So,
16 I could imagine -- and this is just speculation --
17 hypothetically --

18 THE COURT: Please don't speculate.

19 THE WITNESS: She was a hypothetical
20 situation.

21 A In a hypothetical situation, someone could bang
22 their head on the metal rail of the bed and then bang their
23 head on the floor. So, I could imagine two impacts, I
24 guess. But I really don't know what happened.

25 MR. CHAMBERLAIN: One minute, Judge. If I

1 may.

2 THE COURT: Certainly, Mr. Chamberlain.

3 Q You testified before that these blunt impact
4 injuries you were talking about would have been caused by a
5 fist or something not hard, is that correct?

6 A No. I said anything hard. I said, any type of
7 blunt trauma.

8 We're talking about a bruise. Everyone has had a
9 bruise from time to time. You need an impact with something
10 that isn't sharp, but something hard enough to disrupt blood
11 vessels.

12 Q But you're hypothetically concluding the side
13 rail of -- metal rail of a bed?

14 A That was a question asked to me. In fact, I
15 don't know how these injuries happened.

16 Q I understand you. I don't either. And the
17 question is, you gave an example of the deceased to this
18 jury. You gave an example of the deceased hitting her head
19 against a metal rail, which is, as I understand it, is not
20 consistent with your definition of a blunt force impact?

21 MR. BIANCAVILLA: Judge, I'm going to object
22 to that.

23 THE COURT: Sustained.

24 Q Would a sharp metal rail be the type of object
25 that would cause a blunt force impact you described?

1 A A sharp -- I don't understand sharp.

2 Q Well, a metal --

3 THE COURT: Ask another question,

4 Mr. Chamberlain.

5 Q The metal rail -- Doctor, so we make it clear,
6 you're hypothetically including a metal rail on the bed?

7 A I didn't actually see the metal rail. But, yes
8 okay. It is sharp you're saying?

9 Q No, I'm not saying sharp.

10 MR. BIANCAVILLA: Judge, I showed the Doctor
11 this photograph, and asked him if he --

12 THE COURT: You asked a hypothetical
13 question.

14 MR. BIANCAVILLA: Exactly. Based upon the
15 photograph.

16 MR. CHAMBERLAIN: May I see the photograph?

17 MR. BIANCAVILLA: Sure.

18 Q I'm going to show you --

19 MR. CHAMBERLAIN: Can we put it up? Let me
20 show it to the Doctor first.

21 (Whereupon, the referred to item is handed to
22 the witness and then handed back to Mr. Chamberlain)

23 MR. CHAMBERLAIN: Now put it up there.

24 Q Doctor, you hypothetically --.

25 THE COURT: Can you see?

1 THE WITNESS: No, I can't see.

2 THE COURT: Doctor, go down.

3 THE WITNESS: Okay.

4 (Whereupon, Doctor Catanese leaves the
5 witness stand.)

6 Q Doctor Catanese, do you see any metal rail there
7 that could have been hypothetically the cause of the blunt
8 impact that you referred to?

9 MR. BIANCAVILLA: Judge, I'm going to object.

10 THE COURT: Yes, sustained. It's a
11 hypothetical question, Mr. Chamberlain.

12 MR. CHAMBERLAIN: He put before this jury
13 that it might have been the blunt rail. I would like
14 to know what rail he's talking about. I didn't put it
15 before the jury, he did.

16 MR. BIANCAVILLA: It was a hypothetical based
17 upon the photograph.

18 THE COURT: He asked hypothetical questions.

19 MR. CHAMBERLAIN: It has to be based on
20 evidence. There's no evidence.

21 THE COURT: Mr. Chamberlain, please. Ask a
22 question.

23 Q Is there any rail that you see in that picture?

24 MR. BIANCAVILLA: Objection.

25 THE COURT: Sustained.

1 THE COURT: It's a hypothetical question.

2 MR. CHAMBERLAIN: I respectfully suggest,
3 Judge, that hypotheticals are supposed to be based upon
4 evidence in the case, not on something that he's just
5 thinking up.

6 MR. BIANCAVILLA: Judge, I'm going object.

7 MR. CHAMBERLAIN: I respectfully except.

8 No further questions.

9 THE COURT: Sustained.

10 Any further questions, Mr. Biancavilla?

11 MR. BIANCAVILLA: No, Judge.

12 THE COURT: Thank you, Doctor. You may step
13 down.

14 (WITNESS EXCUSED)

15 THE COURT: Ladies and gentlemen, we're going
16 to take a short break at this point. Do not discuss
17 the case among yourselves or with anyone else. Keep an
18 open mind. Do not form or express any opinions until
19 the entire case has been completed. Do not read or
20 listen to any accounts of the case, should it be
21 reported in the media. Do not visit or view any place
22 or premises that have been mentioned. You're not to
23 permit any party to discuss this case with you or
24 attempt to influence you. You must promptly report to
25 the Court any violation thereof.

1 Please follow the court officers, we'll be
2 back shortly.

3 (Whereupon, the sworn jury and alternates
4 leave the courtroom.)

5 MR. CHAMBERLAIN: Judge, I have an
6 application, if I may.

7 THE COURT: Yes, Mr. Chamberlain.

8 MR. CHAMBERLAIN: I'm going to move to
9 preclude the doctor's testimony in its entirety. And
10 the basis of that is that the district attorney at the
11 start of this examination offered a series of
12 photographs, which I believe were unduly gory and
13 unnecessary, including parts of the body taken from
14 inside the neck. Those photographs were offered and
15 accepted by the Court on his representation that this
16 doctor was going to testify that the cause of death was
17 manual strangulation. I advised the Court at that time
18 that he had never so indicated before. And I will read
19 from the grand jury. Page 16, Volume 3,
20 Mr. Biancavilla, page 16, line 5.

21 "QUESTION: What is your opinion" --

22 Let me go back a question, Judge. Bottom of
23 page 52, line 25.

24 "Therefore, Doctor, do you have an opinion
25 with a reasonable degree of medical certainty as to the

1 cause of Miss Williams' -- cause of Miss Williams'
2 question?"

3 I'm sure he meant death.

4 "ANSWER: Yes, I do."

5 "What is your opinion and what is the basis
6 for your opinion?"

7 "ANSWER: Miss Williams' cause of death is
8 strangulation. The basis of my opinion is the
9 evidence, namely, the trauma noted to her neck and
10 larynx, as well as the ligature present on her neck."

11 Now that was the only evidence we were ever
12 provided. He offered, and it was based upon his
13 statement that he was going to elicit testimony, it was
14 a -- cause of death was manual strangulation. That's
15 not what this Doctor testified to and --

16 THE COURT: Is that it, Mr. Chamberlain?

17 MR. CHAMBERLAIN: That's it, Judge.

18 THE COURT: Mr. Biancavilla?

19 MR. BIANCAVILLA: I have to nothing to add,
20 Judge.

21 THE COURT: Mr. Biancavilla, you complied
22 completely with CPL 240.20?

23 MR. BIANCAVILLA: Yes, we have.

24 THE COURT: You turned over scientific
25 reports prepared by the medical examiner?

1 MR. BIANCAVILLA: Judge, we have given
2 everything that he has requested.

3 MR. CHAMBERLAIN: That's what I'm saying,
4 Judge. If he's going to introduce pictures on certain
5 representations, they should be based upon some basis.
6 I assume --

7 THE COURT: He gave me an offer of proof as
8 to what the Doctor was going to testify to. And the
9 doctor did testify to that.

10 Now, you have to understand, Mr. Chamberlain,
11 as I have said to you before when we were up at the
12 bench, with respect to photographs, if the photograph
13 corroborates the evidence that was testified to, it's
14 admissible. The sole reason you would keep out a
15 photograph, if it's sole purpose is to arouse the
16 emotions of the jury and prejudice the defendant.

17 The doctor testified he relied upon each one
18 of these photographs. And each one of these
19 photographs demonstrated something with respect to his
20 reaching his final diagnosis.

21 MR. CHAMBERLAIN: In the opening of this
22 case, Judge, he opened to the jury, there was no
23 question that this poor lady was strangled to death.
24 There's no issue here, unless it's raised by him. And
25 I'm submitting that putting in body parts is not

1 probative of anything, other than inflaming the jury.

2 THE COURT: Mr. Biancavilla.

3 MR. BIANCAVILLA: I have nothing to add,

4 Judge.

5 THE COURT: Mr. Chamberlain, as I told you,
6 the only reason you would leave out a photograph, if it
7 arouses the emotion of the jury and prejudices the
8 defendant. The sole purpose is to arouse the emotions
9 of the jury. As I said before, this is the third time
10 I'm saying it, the sole purpose was not that.

11 The doctor used it to corroborate his
12 testimony as he was testifying as to what was injured,
13 what parts of the body. He was demonstrating to us
14 where certain things, certain colors or certain
15 fractures were, or where certain abrasions were.

16 Now, I don't know what else to tell you,
17 Mr. Chamberlain. But, as I said before at the bench,
18 I'm overruling your objection. You have an exception.

19 MR. CHAMBERLAIN: Thank you.

20 THE Court: Counsel, five minutes.

21 MR. BIANCAVILLA: Thank you, Judge.

22 (Whereupon, there is a brief recess taken in
23 the proceedings.)

24 THE COURT OFFICER: Jury entering.

25 (Whereupon, the sworn jury and alternates

1 enter the courtroom).

2 THE CLERK: Both sides stipulate that all
3 sworn jurors are present and seated properly?

4 MR. CHAMBERLAIN: So stipulated.

5 MR. BIANCAVILLA: Yes.

6 MR. CHAMBERLAIN: Yes.

7 THE COURT: Ladies and gentlemen, we're ready
8 to continue with the trial.

9 Mr. Biancavilla, call your next witness,
10 please.

11 MR. BIANCAVILLA: Doctor Thomas Manning.

12 Witness sworn.

13 THE CLERK:

14 THE COURT OFFICER: Please state your name,
15 spell your last name, please.

16 THE WITNESS: Name is Thomas Manning,
17 M-A-N-N-I-N-G.

18 THE COURT OFFICER: Town in which you reside?

19 THE COURT: County.

20 THE WITNESS: Nassau County.

21 THE COURT: You may inquire, Mr. Biancavilla.

22 MR. BIANCAVILLA: Thank you.

23 DIRECT EXAMINATION

24 BY MR. BIANCAVILLA:

25 Q Good afternoon, Doctor Manning.

1 A Good afternoon.

2 Q Thank you for joining us.

3 Doctor Manning, would you tell the jury where
4 you're employed?

5 A I'm employed in the Nassau County Medical
6 Examiner's Office, where I'm the Chief Toxicologist.

7 Q How long have you been with the Nassau County
8 Medical Examiner's Office?

9 A For just over thirty years.

10 Q And how long have you been Chief of Toxicology?

11 A I think twenty-four -- twenty-four years.

12 Q Could you please explain to the jury your
13 credentials and background?

14 A Yes. I have a Bachelor's Degree from Manhattan
15 College. A Master's Degree in physiology from Adelphi
16 University. And a PHD in pharmacology, toxicology from St.
17 John's University. I'm Board Certified in forensic
18 toxicology. And I am licensed as a laboratory director by
19 the New York State Health Department.

20 I'm a member of a number of professional
21 organizations, the American Academy of forensic Sciences.
22 The American Association of Crime Lab Directors. And the
23 Society of forensic Toxicology, to which I was on the board
24 of directors.

25 I serve as a con -- I teach a course in

1 toxicology at CW Post on alternate years with Adelphi
2 University.

3 I am a consultant to South Oaks Hospital, which
4 is an alcohol rehabilitation hospital in Amityville. I am
5 also a consultant to the Drug and Alcohol Commission for the
6 US Army and whole military. We have the contract for the
7 whole military; that is, the Air Force, Navy and the Army as
8 well.

9 I have a number of publications, some fifteen
10 publications, in the area of toxicology.

11 Q Doctor, what is forensic toxicology?

12 A Forensic toxicology, toxicology in its broader
13 sense is the study of poisons and their effect on the body.

14 In our particular area, forensic toxicology, is
15 one where we specialize in the forensic aspect, that is, the
16 court presentation of these findings in the court of law.

17 Q What are your responsibilities as Chief of
18 Toxicology at the Nassau County Medical Examiner's Office?

19 A I supervise a laboratory of some eight analysts
20 who analyze tissues for the presence of drugs and chemicals
21 or anything which could cause or contribute to the death of
22 an individual. It is my job to review the data and then
23 finalize a report.

24 Q Now, Doctor, during the course of your
25 professional career, have you testified in courts of law as

1 an expert in the field of toxicology?

2 A Yes, probably at least a hundred times.

3 Q And have you rendered opinions regarding the
4 field of toxicology?

5 A Yes.

6 Q In what type of courts?

7 A In federal court, just about every county court
8 around in Nassau, Suffolk, Westchester, all the state
9 courts.

10 Q Okay.. Doctor, I'm going to ask that you take a
11 look at what has been marked as People's 67 for
12 identification.

13 A Yes.

14 Q Now, is that document kept in the regular course
15 of business of the Nassau County Medical Examiner's Office?

16 A Yes, it is.

17 Q Is it the regular course of business for the
18 Nassau County Medical Examiner's Office to keep that
19 document?

20 A Yes, it is.

21 Q Is the information contained therein placed in
22 that record at or about the time of the tests performed?

23 A Yes.

24 MR. BIANCAVILLA: We offer that into
25 evidence.

1 THE COURT: Show it to Mr. Chamberlain,
2 please.

3 MR. CHAMBERLAIN: I have a copy, Judge.
4 Toxicological report.

5 No objection.

6 (Whereupon, the referred to item previously
7 marked for identification is received and marked
8 People's Exhibit 67 in evidence by the reporter as
9 instructed)

10 THE COURT OFFICER: So marked.

11 Q Doctor Manning, could you describe for the jury
12 what alcohol is and its actual effects?

13 A Yes. Alcohol -- and I'm assuming we're talking
14 about drinking alcohol which people consume.

15 Q Yes, drinking alcohol.

16 A It is a compound found in, I guess you might want
17 to call it, food. But it is a compound which when taken is
18 absorbed into the bloodstream and then has a depressing
19 effect on the central nervous system. That is, it makes the
20 central nervous system, the brain and all of the peripheral
21 nerves sluggish. It's sort of like working with a dead
22 battery. The higher the alcohol concentration gets, the
23 effect of the depressing effect becomes more pronounced and
24 the impulses that are generated in the body become
25 diminished, so that you do not get the same -- you get a

1 euphoric effect first. But then, in addition to that, you
2 get this depressing effect which, again, makes the body
3 sluggish?

4 Q Doctor, does the effect of alcohol differ
5 depending upon the size of an individual?

6 A Not in the way we measure it. We measure it as
7 far as a certain concentration in the blood. That
8 concentration, not taking tolerance into account, but in
9 general has the same physiological effects on everybody.

10 Q Now, the victim in this case, Ruth Williams, to
11 which that is a toxicology report you have, is five feet and
12 is one hundred and fifty-five pounds. the jury has heard
13 she has had a blood alcohol level of a .26.

14 A Yes.

15 Q Could you describe to the jury the effect of .26
16 of alcohol on the victim in this case?

17 A Yes. She would be severely intoxicated. And by
18 this I mean, first her mental capacities would be
19 diminished. By this we call it mental cloudiness. Things
20 that you have learned over your lifetime you tend to ignore.
21 You tend to do things which are not -- you wouldn't normally
22 do.

23 The second effect, and certainly at this level we
24 would see these kind of things, your judgment being
25 impaired. you can't judge distance, speed a whole host of

1 things.

2 The third effect is on reaction time. And the
3 main thing here with reaction time is it becomes
4 diminished -- I mean, increased. That is, if you take your
5 hand and you put it on a hot plate, it takes a long time for
6 you, certain -- certain amount of time for you to realize
7 it's hot and you pull your hand away.

8 Well, with alcohol, this becomes diminished. So
9 that the reaction time becomes increased, it takes you
10 longer to react to that situation, so you leave your hand
11 there. You don't realize that it's hot, it takes longer to
12 make that recognition and then takes longer for you to
13 respond to that.

14 The next effect is uncoordination. Since all of
15 your senses are controlled by nerves, by making them dull,
16 your ability to feel things becomes greatly diminished,
17 again, along with the inability to react once you do feel
18 it. Even though you feel it, so what.

19 And then the final effect and major effect is
20 another effect is on vision. You certainly, with a person
21 with a .26 alcohol, would have tunnel vision, which really
22 is not that important in this case. But, certainly would
23 have blurred and probably double vision in this particular
24 case.

25 Q Now, in terms of reaching a level of .26, how

1 much alcoholic beverages would have to be consumed?

2 A Again. She's one hundred and sixty-five pounds,
3 and she's a female, she would have to consume at least --
4 to have in her body at the time she died, would have at least
5 ten drinks in her, probably more like fifteen, depending on
6 what the drink may be.

7 Q I'm sorry, Doctor, I didn't hear that.

8 A Depending on what the drink may be. When I say
9 ten standard drinks, I'm talking about one and a quarter
10 ounces of hard liquor, twelve ounces of standard beer, a can
11 of beer -- beer does vary in alcohol concentration, so it
12 may be a little more if she's drinking light beer rather
13 than regular beer -- or four ounce of wine. That's pretty
14 much what we use as a standard because the alcohol
15 concentration in four ounces of wine equals the same alcohol
16 concentration in twelve ounce of beer and one and-a-quarter
17 ounces of a hard liquor.

18 Q Now, Doctor, the toxicological report that was
19 generated by your staff in this particular case, you
20 performed several tests in that case, correct?

21 A Well, the laboratory did, yes.

22 Q The laboratory did. Yes. Can you tell the jury
23 what tests were performed?

24 A We did test for gases. And the main one is
25 carbon monoxide. We do this routinely. On all of our cases

1 we do a certain amount of tests that cover about ninety
2 percent of the poisons that are out there. There are some
3 poisons that, or substances, that we do not normally look
4 for because they just are exotic poisons that you don't
5 normally see, something like curare. We would do curare if
6 we knew it was there. But in most cases we go for ninety
7 percent of the compounds.

8 We did this in this case and we divided this into
9 category. The first gas, variety of gases, poisons and
10 carbon monoxide is the one we look for there. And that was
11 within the normal range. We look for acid and basic
12 compounds, these would be drugs like barbiturates, aspirin
13 and the like. There was none of those compounds found.

14 Q What are barbiturates, Doctor?

15 A Barbiturates are compounds used in sleeping
16 preparations and also used as anticonvulsants. Somebody who
17 has convulsions very often will be put on phenobarbital,
18 which is one of the barbiturates. Other barbiturates are
19 usually sleeping preparations such as secobarbital, Seconal
20 and the like.

21 Q Was there anything present in this?

22 A No.

23 Q What's the next category?

24 A Basic compounds. This is the vast majority of
25 the drugs that are out there. We screen for, as I say,

1 probably in the order of a thousand compounds. And none of
2 them were detected.

3 Q So, I'm not going to ask you to list them all.

4 A No, I couldn't if you do.

5 Q How about opiates?

6 A In addition, we do specific tests for compounds
7 that are, quote, "drugs of abuse." And we did all of them.
8 And I can list them for you.

9 Q Please.

10 A Methadone, amphetamines, phencyclidine, which is
11 PCP, Benzoylecgonine --

12 Q Excuse me, I think you have to spell that.

13 A B-E-N-Z-O-Y-L-E-C-G-O-N-I-N-E. Benzodiazepine,
14 which are Valium type compounds, and opiates, which would be
15 morphine and heroin and the like. And none of these were
16 present.

17 Q Okay. Cocaine, Doctor, Manning, what is that a
18 derivative of?

19 A Cocaine is an extract from a plant. And it
20 produces a euphoric use, and it's a stimulant to the central
21 nervous system. We tested for -- we tested for breakdown
22 product, which is Benzoylecgonine, and that was negative.

23 Q If a person -- hypothetically speaking, Doctor,
24 if a person was a user of cocaine --

25 A Yes.

1 Q Is there a particular time that cocaine would
2 stay within the individual's system?

3 A Certainly we would see it within forty-eight
4 hours of use.

5 Q Now, if --

6 A In some cases it could even last longer than
7 that. There was nothing here, so she certainly didn't use
8 it forty-eight hours prior to her death.

9 Q When you say drugs that -- you tested for drugs
10 of abuse, was there any indication of any type of
11 toxicological finding with respect to any type of drug
12 abuse?

13 A No. We did a specific test for a compound called
14 gamma-hydroxybuteric acid, which is gamma. I think most
15 people are familiar with a compound called the date rape
16 drug. And this is it. We do this on cases where we might
17 suspect that somebody was drugged in order to seduce a
18 person. We tested for that. And although we did find some,
19 it's probably from a breakdown product in the body. The
20 body makes this compound. And we did see some very low
21 levels, but they're not significant. So --

22 Q But you saw no indication of cocaine use or
23 cocaine abuse?

24 A No.

25 MR. BIANCAVILLA: Thank you, Doctor Manning.

1 I have no further questions.

2 THE COURT: Mr. Chamberlain.

3 MR. CHAMBERLAIN: Thank you, Judge.

4 CROSS EXAMINATION

5 BY MR. CHAMBERLAIN:

6 Q Doctor Manning --

7 A Good morning -- good afternoon.

8 Q Now, the last thing you spoke of, the
9 gamma-hydroxybutyric acid, did I pronounce that right?

10 A Yes.

11 Q That is commonly known as a date rape drug?

12 A Yes.

13 Q It's also a recreational drug that some people
14 take?

15 A Yes.

16 Q And you found, according to the report, 2.6
17 milligrams/L, per liter, I suppose?

18 A Right.

19 Q Exactly what is -- what dose is that?

20 A Well, the compound you normally produce this
21 compound gamma-butyric acid in your body. So, if I tested
22 anybody, especially after they died, they build it up, you
23 will get certain levels. Anything over five milligrams per
24 deciliter we would consider to be significant. We tested.
25 It was 2.6. So, there's no significant finding in that

1 gamma.

2 Q When you say no significant, you -- no
3 significant finding, you can't testify with any reasonable
4 degree of medical certainty that that finding of that drug
5 in her system was not something she had -- she had taken?
6 In other words, you can't testify, certainly, that it was
7 just normal?

8 A Yes, I can.

9 Q You can?

10 A Yes. We see that in everybody.

11 Q Doctor, you indicated that you found her severely
12 intoxicated based upon the blood alcohol contents .26, is
13 that right?

14 A That's correct.

15 Q And you testified what that would do to a normal
16 person, right?

17 A Yes.

18 Q As far as affecting impairment, judgment,
19 reaction time, coordination and so forth, right?

20 A That's correct.

21 Q Is it not a fact, Doctor, that certain people who
22 are drink heavily can accustom themselves to the alcohol and
23 act in a manner that is less -- has less effect where it
24 doesn't show up?

25 A They would appear that, yes. But that doesn't

1 mean they don't have the physiological effects of alcohol.

2 Q They certainly could appear they could handle it?

3 A She could appear that she is sober as a judge.

4 THE COURT: Excuse me?

5 THE WITNESS: Excuse me, your Honor.

6 MR. CHAMBERLAIN: You mean the Judge in this

7 case.

8 A She could appear very sober. But that doesn't

9 mean the physiological effects of alcohol are not there.

10 Q So, what you're saying, some guy who is a

11 confirmed alcoholic could walk down the street and look

12 perfectly normal and still have effects?

13 A He would still have the effects of the alcohol,

14 yes.

15 Q Some of these people could wake up at .20, can't

16 they?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: I ask that you read it back.

19 (Whereupon, the requested question was read

20 back by the reporter as instructed.)

21 THE COURT: Sustained.

22 Q Referring to severe alcoholics, have you had --

23 do you have knowledge in your study of toxicology of people

24 who have a high level of blood alcohol at all times?

25 A At all times?

1 Q Well, even when they wake up in the morning? How
2 about a severe alcoholic, you have any experience with that?

3 A A severe alcoholic would eventually burn it off.
4 The idea is that if you didn't burn alcohol off, you would
5 take a drink and stay drunk forever. That doesn't happen.
6 Everybody knows that. It does wear off. It breaks down,
7 alcohol. It brakes down at a fairly consistent rate, by the
8 way, even in an alcoholic.

9 Q Right. If the person has this high level and
10 takes some more, they could keep the level up, right?

11 A Yes.

12 Q In any event, the tests -- you didn't perform any
13 tests as to the -- any tests specific for cocaine, did you,
14 Doctor?

15 A We test -- in the body cocaine is immediately or
16 broken down to a compound called Benzoylecgonine. So,
17 laboratories don't test specifically for cocaine. They test
18 for -- specifically for the Benzoylecgonine. If the
19 Benzoylecgonine is there, we go further with it, with
20 confirmation tests and so on. That's what we did in this
21 particular case. There was no Benzoylecgonine.

22 Q You didn't detect any, is that what your report
23 says?

24 A Right.

25 Q And isn't it possible that a signal amount of

1 cocaine could have been there and that more specific tests
2 to determine that or its breakdown components could have
3 been performed?

4 A No. With -- the cut off levels that we use are
5 at such extremely low concentration, their level -- below
6 that level would be no significant finding.

7 Q Would you say no significant finding, if somebody
8 had taken a dose -- snorted a dose of -- a small dose of
9 cocaine two days before, two or three days before that,
10 wouldn't show up in the test, isn't that correct?

11 A³ That's correct. That's what I said. Forty-eight
12 hours is pretty much the outset. Sometimes you can pick it
13 up a little longer. But chronic people, sometimes you can
14 pick it up five or six days even. But, in general, general
15 population, a person who uses cocaine, you wouldn't see it
16 in his urine after forty-eight hours.

17 Q Is there a test for, called mass spectroscopy?

18 A³ Yes.

19 Q Is that a more specific test for smaller doses?

20 A³ No. It's more specific -- it's not always as
21 sensitive as some of the other tests we ran in this case.

22 Q You use the mass spectroscopy. Once you find a
23 preliminary finding by the screen test, which we did, you
24 will use mass spectroscopy as a way of making a very
25 positive identification. Mass spectroscopy is a fingerprint

1 of chemistry. And when you use mass spectroscopy, you use
2 an identification to an absolute certainty. The thing is
3 relatively complicated. You use the screen first to
4 determine whether the material is there. And if it's there,
5 then we go to mass spectroscopy to do the confirmation test.

6 There was mass spectroscopy done in this case, by
7 the way, just to rule out any of the other drugs. And there
8 was nothing there. We do it on every case.

9 Q Okay. So, as you sit here, you can't tell us --
10 withdrawn.

11 MR. CHAMBERLAIN: I have nothing further.

12 Thank you very much, Doctor.

13 THE COURT: Mr. Biancavilla?

14 MR. BIANCAVILLA: Absolutely nothing else.

15 THE COURT: Thank you, Doctor.

16 THE WITNESS: Thank you, your Honor. I
17 didn't mean to say sober as a judge.

18 THE COURT: Not a problem.

19 (WITNESS EXCUSED)

20 THE COURT: Counsel, approach the bench,
21 please.

22 (Whereupon, there is a discussion held at the
23 Bench, off the record between the Court and Counsel.)

24 THE COURT: Ladies and gentlemen, we're going
25 to excuse you for the day and ask you to be back

1 tomorrow morning at 9:30.

2 Okay. Do not discuss the case among
3 yourselves or with anyone else. Keep an open mind. Do
4 not form or express any opinions until the entire case
5 has been completed. Do not read or listen to any
6 accounts of the case, should it be reported in the
7 media. Do not visit or view any premises mentioned.
8 Finally, do not permit any party to discuss this case
9 or an attempt to influence you. You must promptly
10 report to the Court any violation thereof.

11 Have a nice evening. See you tomorrow
12 morning at 9:30.

13 (Whereupon, the sworn jury and alternates
14 leave the courtroom)

15 THE COURT: Counsel, come forward, please.

16 (Whereupon, there is a discussion held at the
17 Bench, off the record, between the Court and Counsel.)

18 (Whereupon, Court stands in recess for the
19 day. The trial is adjourned to May 10th, 2002 at
20 9:30 am)

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